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Supreme Court, U.S.
FILED
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No.______________

In The
Supreme Court of the United States

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ROCK ABOU-SAKHER,
Petitioner,
v.
RICHARD McCOY, et. al.,
Respondent(s).

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On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Rock Abou-Sakher, Pro Se,
11493 Hurricane Creek Road,
McEwen, Tennessee 37101,
(931) 582-3854,
For Petitioner.

158 pp
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QUESTIONS PRESENTED

1. Whether, when as in this instant case, a federal, magistrate judge engages in multiple instances of ex-parte communications, with certain of the opposing defense counsel, to purposefully and deliberately create pretexts to be used to procedurally dismiss a plaintiff's consolidated cases in that court, due process has been denied to the petitioner.

2. Whether, when as in this instant case, a federal magistrate judge, from the bench, knowingly and deliberately gives a plaintiff false information and directions, to purposefully and unfairly favor certain defense counsel over the plaintiff, due process has been denied to the petitioner.

3. Whether, when as in this instant case, a federal magistrate judge, declares, from the

bench, a plaintiff to be other than honorable, showing himself to be biased against the plaintiff, and then does not recuse himself from the case, due process has been denied.

PARTIES TO THE PROCEEDING

Petitioner:

Rock Abou-Sakher, a naturalized citizen of the United States,

Respondents:

Richard McCoy, the chairman of the Humphreys County, Tennessee, Airport Authority, and the editor of the *News-Democrat* newspaper; Humphreys County Airport Authority, together with its members; The Humphreys County Board of Commissioners, together with its members; *News-Democrat,* a weekly newspaper in Humphreys County Tennessee; Kennedy Newspapers, parent company of the News-Democrat newspaper; Jaycee Rawlings, County Executive of Humphreys County, Tennessee; Travis Jenkins, manager of the Humphreys County Airport; John Lee Williams, a contracted attorney for Humphreys County, Tennessee; Ira C. Mercer, a strong-arm thug hired by Humphreys County, Tennessee, and hired by the Humphreys County Airport Authority; Billy Hugh Link, a Commissioner on the Humphreys County Board of Commissioners, and a member of the Humphreys County Airport Authority; Jeff Ladd, a Commissioner on the Humphreys County Board of Commissioners, and a member of the Humphreys County Airport Authority,

Respondents.

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CITATIONS OF PRIOR COURT ACTIONS

Abou-Sakher v McCoy, et.al., 96-1131; 97-0450; and 97-0896 in the United States District Court for the Middle District of Tennessee.

Abou-Sakher v McCoy, et. al., 6th Circuit, 98-6704

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction where, as in this instant case, the lower courts have so far departed from a normal course of action as to constitute an abuse of judicial discretion and therefore deny due process to a litigant in that court. 28 U.S.C.A Section 1257 & 1254.

STATEMENT OF MATERIAL FACTS

The plaintiff says that when a federal magistrate judge, from the bench, as in this instant case, deliberately gives the plaintiff false information and directions to especially benefit certain defense counsel, and then uses the subsequent action of the petitioner, in following the false information and direction, as one of the four reasons cited as justification to procedurally dismiss the plaintiff's consolidated actions, the plaintiff has, again, been denied due process in the Federal Courts.

The plaintiff/appellant/petitioner, Rock Abou-Sakher, respectfully asks this Court to issue a Writ of Certiorari and hear this case on the claim of a complete and total denial of due process in the lower federal court system.

ARGUMENT

THE DISTRICT COURT ERRED

The District Court erred in its conclusion, based on the ***Report And Recommendation*** of the Magistrate Judge, that the Appellant deliberately carried out a **continuing pattern of**

disobedience of Court Orders. (emphasis mine.)

The Magistrate Judge based his recommendation on four (4) instances cited as constituting the alleged continuing pattern of disobedience of Court Orders. What the Magistrate Judge wrongly concluded was that there was a **continuing** pattern of four instances of disobedience of Court Orders, but which were instead four **separate** and **distinct** instances of errors. The fact is that each time the Appellant was warned by the Court, he did not repeat that same error again, and therefore did not violate that Court Order. The Appellant did subsequently make other different errors, but did not, after each time being warned by the Court, commit those same errors again, and did therefore not violate any of those four **different** Court Orders. The mistakes were made before each of the Court Orders were issued, and not repeated again after the Court Orders were issued. There was no **continuing** violation of any single Court Order as depicted in the Magistrate Judge's ***Report and Recommendation.*** It is true that the Appellant continued to make errors, but they were different errors and not a continuation of the same error; **this is an important difference** that the lower courts have failed to recognize. The Rules of Procedure are complicated and the Appellant made mistakes, but there was never any bad faith connected with any of these errors; they were honest mistakes caused by, among other things, a lack of experience in procedure and misinformation given to the plaintiff by the court.

In the latter part of paragraph 2, page 2, (paragraphs unnumbered) of the ***Report and Recommendation,*** the Magistrate Judge states that the **"...issues of plaintiff's alleged**

property and employment rights have been litigated and decided adversely to him in Tennessee state court...."(emphasis mine) This is a highly prejudicial, misleading, and unjustified statement made by the Magistrate Judge.

What the Magistrate Judge failed to point out was that the State Court decisions gave the Plaintiff a property interest through a holdover tenancy until March 1, 1996.

And, the decision did not say that the Plaintiff did not have employment rights; it said that any such employment rights had not been awarded by the language of the Contract Agreement itself. Also, a Humphreys County Jury of twelve citizens, after hearing all of the facts presented at trial, on the same question of property, found in favor of the plaintiff. The Magistrate Judge cited four instances of the Appellant's alleged violations of Court Orders to justify the dismissal of all of the Appellants claims and cases. The Court Orders were each issued together with warnings; that is true. They were issued after the fact and said, basically, do not do this again or you will be dismissed. The Appellant did not do those things again, but was dismissed anyway for doing other things the court had not warned about. In essence saying: do not make another mistake of any kind or you will be dismissed.

INSTANCE NUMBER ONE:

The Magistrate Judge's ***Report and Recommendation*** cited as one of the four instances of an alleged violation of Court Orders, a Notice of the taking of the Appellant's deposition. The **notice** of the taking of the Appellant's deposition **was defective**; it gave the Appellant only four (4) days Notice of the taking of his deposition; the rules require 5 days notice. Since the Notice was defective, and since the plaintiff has not subsequently failed to appear for a deposition, the Appellant did not violate the Court Order.

It should especially be noted here that the certificate of service attached to this Notice, on January 13, 1997, did not reflect service on the remainder of the parties to the action, and was not signed and dated. The Certificate of Service on the Notice of January 13, 1997, handed to the Plaintiff, by Attorney Williams, listed no party, other than the Plaintiff. Rule 30(b)(1) F.R.C.V.P., requires that written notice be given to every other party to the action. This was not certified as to having been done, and the Plaintiff should not be left to guess if a proper service had been effected. The lack of Notice to the other parties was a defect that could have negatively affected the Plaintiff at a later date. The lower courts have ignored these two crucial points.

INSTANCE NUMBER TWO

As to the " second " instance of Plaintiff's alleged " noncompliance with Orders of the Court...." the Magistrate Judge (paragraph 12, page 6) says" Despite this Order of the Court, however, plaintiff failed to respond properly to defendant McCoy's discovery requests by (1) producing an undifferentiated list of names in response to interrogatories which requested specific identification of witnesses and documents that could substantiate plaintiff's claims against each of the defendants; and (2) delivering, in response to defendant McCoy's document requests, four boxes of duplicative documents, video tapes, and audio tapes which were not indexed, catalogued, or otherwise produced in any format responsive to the requests. In response to this cited alleged instance of noncompliance, the Appellant again asks the Court to please read the Objection filed by the Appellant in the District Court as docket number 168.

Here again the Magistrate Judge is issuing misleading statements. The four boxes of documents and tapes were, of course, duplicates; **they were supposed to be duplicates**.

However, they were not all four delivered to defendant McCoy, as the Magistrate's statement implies. One box each was delivered to each of the attorneys who were housed in different offices and who represented defendants in the action. This is what the Appellant was supposed to do, and this is what he did.

Also, the Magistrate's statement says the Appellant failed to "respond properly" to the request. All that the request said was to send **"all"** that I had. I did that. Again, please read docket number 168 for a more complete explanation of my side of the story. The request said nothing about indexing, differentiating, or cataloguing. The request simply said send **"all"** that you have. The Appellant did send **"all"** that he had. And, it was **all labeled and given exhibit numbers.** This was much unlike the darkened room full of trash, old furniture, and unmarked boxes that the defense attorney, John Lee Williams, led the Appellant to and told to help himself, because it was not his responsibility to show the Appellant where anything was. If it was not the defense attorney's responsibility to index, differentiate, or catalog, why then is it the plaintiff's responsibility to do that in response to the defense request. Fair and equal? Again, note that the plaintiff's submissions were all labeled and given exhibit numbers.

INSTANCE NUMBER THREE

The third instance of the Plaintiff's alleged violation of an Order of the Court concerned the Sign and Date Order and related filings. (Docket numbers 21, 22, 26, and 39) On March 3, 1997, the defendants filed a Motion to Require the Plaintiff to sign and date all servings on the defendants. The Motion had no exhibits or attachments. The Motion made no mention of what serving was not signed or dated. The Motion merely said that the Plaintiff " **persistently** " (emphasis mine) failed to sign and date his servings on the defendants. In his ***Report and Recommendation***, Magistrate Judge Haynes (paragraph 14, page 7) said: " As a result of Plaintiff's failure to sign and date the certificate of service attached to defendants' copy of plaintiff's motion for default judgment against defendants McCoy and Rawlings in their individual capacities (Docket Entry No. 20), defendants were " **forced** " (emphasis mine) to file a motion to require dated and executed certificates of service (Docket Entry No. 21). And, once again, this Appellant is asking the Court to read his Objection filed in the District Court as docket number 168. On the date the Magistrate Judge wrote those words, he had no way, other than ex-parte communication with defense counsel, to know that it was the Motion for Default Judgment (docket #20) that was claimed not to have been signed and dated. The original of the Motion filed with the Court **was signed and dated.** In fact, the Appellant has never failed to sign and date any paper that he has filed in District Court and the defense counsel has fail to show a tangible paper served but unsigned by the plaintiff.

INSTANCE NUMBER FOUR

The fourth and last instance cited as an alleged violation of Court Orders and used as the basis for a recommendation for dismissal concerned being late with part of a Rule 16 Statement. And, once again, the Appellant asks the Court to read the Objection filed in the district court as docket number 168. The Appellant was only given two weeks to prepare his Rule 16 Statement. It simply was not humanly possible for one individual to do that in two weeks. The Appellant did file the first part on time to show good faith and did file the second part eleven days later and the third part two days after that.

The defendants were in no way harmed by that less than two week filing. It should be pointed out that the Rule 16 report contained several hundred pages. It should also be pointed out that on the same day that the plaintiff was given two weeks to complete his Rule 16 report, the defense was given thirty days to answer the plaintiff's interrogatories that were sixty days late already. This is fair and impartial?

There are several types of sanctions that could have been taken against the Appellant after instance number one, or two, or three, or four, if justified. After each warning, the Appellant did not repeat. True, something different occurred and another warning was given for the something different. But, to apply the most severe sanction possible against a pro se litigant because he did not achieve perfection is an unduly harsh application of the law and is a denial of due process. The Appellant did the best that he could do with his knowledge and experiences, and everything that he did was done in the good faith belief that he was doing what he was supposed to be doing to the best of his ability and understanding.

The Appellant believes that the information contained in this paper, and the information contained in his Objection filed in District Court as docket number 168, and in the record as a whole, shows clearly that there were several instances of ex-parte communication between the Magistrate Judge and some or all of the defense counsel. For example: The defense counsel said that it was not him that had ex-parte communication with the Magistrate Judge, it was the secretary. It was the defense counsel that signed the letter to the Magistrate Judge, not the secretary. So, defense counsel cannot have ex-parte communication with the magistrate Judge by telephone or in person, but he can through his secretary? The Appellant says that the record shows that there was more than one event of ex-parte communication between one or more of the defense counsel and the Magistrate Judge, and the Appellant says that this would have been made known during a hearing on the Motion to Dismiss, and that is why the Appellant's request for a hearing was denied. And, that is why the Appellant is asking this Court to remand this matter back to District Court for that hearing.

The Appellant further believes that a hearing should have been granted, before the Order of Dismissal was issued by Judge Campbell. The Appellant was never given an opportunity to prove his innocence on the charges brought by the Magistrate Judge. The Appellant was not given an opportunity to show that the Magistrate Judge had deliberately mislead him and then used the resultant action against the Appellant.

Scheduling Order after Scheduling Order was issued without any input from, or even knowledge of, the Appellant; all of them, with one exception, expressly to the benefit of the defense counsel and to the detriment of the Appellant.

The Appellant did not receive fair and impartial treatment in the District Court. The Appellant was held to standards even more stringent than the attorneys were held by the District Court. The defense counsel was 60 days late with answers to the Appellant's interrogatories and the Magistrate Judge gave them an extra 30 days, and he did this at the same status conference that he gave the Appellant 14 days to prepare his 200 plus page Rule 16 Statement.

The defense counsel failed to sign and date several servings and the Appellant produced specific exhibits to support that fact and he was denied his Motion. The defense counsel merely asserted, with no exhibits or mention of what paper had not been signed and dated, and the Magistrate Judge approved the Motion and warned the Appellant he would be dismissed.

The Magistrate Judge told the Appellant, from the bench, that the Appellant need serve only one common counsel for each defendant to save defense counsel the cost of one box of the discovery materials requested, and then later, when the Appellant subsequently did that one common counsel service with a small page motion, the Magistrate Judge used the Appellant's failure to serve all of the defense counsel as a basis for dismissal. Fair and impartial?

The Magistrate Judge used information not in the record in Orders issued by him against the Appellant. The Magistrate Judge told the Appellant, from the bench, that the defense counsel did not need to submit exhibits to support their claims because they were "...officers of the Court, honorable men, and had taken an oath." The Appellant, however, would not be believed even with exhibits. Fair and impartial?

The February 5th Order to answer fully and completely was issued months after the Appellant had answered the defense counsel's interrogatories. The Magistrate Judge had no way, short of ex-parte communication with defense counsel, of even knowing what the questions and their answers were; none of this was filed with the Court; it was not in the record. Where did the magistrate judge get his information?

The Appellant asks the Court to notice the number of filings made in this consolidated case and then determine if the Appellant has failed in his attempt to satisfy the requests made on him by the defendants. The Court should also notice that of all the Motions made by the Appellant and of all of the Motions made by the defense counsel, how many of the Appellant's Motions were approved (1) and how many of the defense counsel's motions (almost every one) were approved. Some of the Appellant's Motions were never even acted on; they were simply ignored. Fair and impartial?

The Appellant's Objection to the Magistrate Judge's ***Report and Recommendation***, filed in the District Court as docket number 168, is fully incorporated herein as much as if it were contained herein and is appended here in full.

The Appellant has made grave charges here, and in his other filings, against Magistrate Judge, William Haynes, and one or more of the defense counsel. If what the Appellant says in those charges is not true, he should be severely sanctioned. However, he should not be sanctioned summarily; there should be a hearing to determine if the charges are true.

The plaintiff believes that the Magistrate Judge, William Haynes, took the actions that he took, not to serve justice, but to serve himself. The plaintiff believes that Magistrate Judge Haynes wanted the support of an influential law firm to recommend him for an appointment as a full judge on the federal bench, and he would get that support if he could get a ten million dollar lawsuit procedurally and pretexturally dismissed. Magistrate Haynes did recommend dismissal and he is now a full judge on the federal bench.

The Appellant asks this Court to remand this matter back to District Court for a hearing on the questions raised and charges made of unfair and prejudicial treatment against the Appellant. The Appellant further asks this Court, in the event a hearing is held and the charges are proven, to take the appropriate action and allow the Appellant to proceed with the redress of his grievances in the District Court.

(I) Do the technical requirements of the Federal Rules of Civil Procedure, in the absence of fraud or bad faith out weigh the redress of the Civil Rights of a citizen proceeding pro se in the Federal District Courts?

(II) Should a District Court be allowed to wait until it has amassed what it considers to be sufficient justification for dismissal, or should it take progressively more severe steps earlier in the proceedings to halt what it considers abuses of the process to help prevent pro se litigants, who are unfamiliar with the procedures, from being dismissed notwithstanding the validity of their civil rights deprivation claims?

(III) Should materials, information, requests, motions, statements, filings, assertions, suggestions, and interpretations of Rules be given more consideration and approval by the Court simply because they are submitted or presented by an attorney, as opposed to a pro se litigant; and on that basis alone?

(IV) Should a defense attorney be allowed to write a Magistrate Judge's ***Report and Recommendation?***

(V) Should Scheduling Orders be formulated solely between the opposing counsel and the Magistrate Judge while unknown to, and with no input from, a pro se litigant?

(VI) Should a pro se litigant's civil rights claims be dismissed because he may have made more than one procedural error, or where there is at least a reasonable explanation sufficient to cast doubt on the inclusion of bad faith into an interpretation of the motives of the pro se litigant's actions?

(VII) Should a pro se litigant be given the opportunity of a hearing to decide whether a motion to dismiss is truly justified as a **first sanction action,** in a complicated case with two sides, before the motion is granted by the Court, and would the denial of such a hearing amount to a denial of due process?

CONCLUSION

The Appellant, Rock Abou-Sakher, admits that he may have made some procedural errors in the prosecution of his claims in the District Court below. The Appellant, Rock Abou-Sakher, specifically denies that any action that he took was taken in bad faith. The Appellant, Rock Abou-Sakher, does not claim to be perfect, but he does claim to be as honest and honorable as his opponents are, and he hopes and believes even more so than his opponents.

The Appellant has claimed that the Magistrate Judge, William Haynes, and one or more of the defense attorneys, in these consolidated cases, have acted improperly and in collusion against the Appellant.

The Appellant realizes that this claim subjects him to suspicion and possible assertions of paranoia, since his entire case revolves around what he claims to be an ongoing, single-purpose conspiracy to deprive him of his Constitutionally protected civil rights. A properly conducted hearing in Court would satisfy that question. To deny the Appellant a hearing either in this Court or in the lower Court would be a miscarriage of justice and would fail to uphold the integrity of the Court and would continue to deny the petitioner his day in court

AFFIRMATION

I, Rock Abou-Sakher, declare under penalty of perjury, pursuant to 28 U.S.C.A., Section 1746, that all of the foregoing is true and correct to the best of my knowledge and belief. I make this declaration on the 5th day of March, 2001.

Rock Abou-Sakher, Petitioner
11493 Hurricane Creek Road
McEwen, Tennessee 37101
(931) 582-3854

OATH AND VERIFICATION

I, Rock Abou-Sakher, declare under penalty of perjury pursuant to 28 U.S.C.A., Section 1746, that the foregoing information is true and correct to the best of my knowledge and belief, and this I say and attest to on this the 5th day of MARch, 2001.

Rock Abou-Sakher, Petitioner,Pro Se

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP, on 6-26-98 By TLC

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ROCK ABOU-SAKHER)
)
v.) No. 3:96-1131
) CONSOLIDATED
WITH
RICHARD McCOY, et al.) 3:97-0771,
3:97-0772, and
3:97-0777
) JUDGE
CAMPBELL

REPORT AND RECOMMENDATION

I. INTRODUCTION

This civil action was referred to the Magistrate Judge by the Honorable Todd J. Campbell, District Judge, by Order entered January 24, 1997 (Docket Entry No. 13). Pursuant to 28 U.S.C. § 636(b)(1)9B0 and (C), the Magistrate Judge was directed to prepare recommendations for the disposition of the Motion to Dismiss on Behalf of the Humphreys County Defendants (Docket Entry No. 88), the renewed Motion to Dismiss on Behalf of the Humphreys County Defendants Richard McCoy in his Capacity as Editor of the News-Democrat and Kennedy Newspaper Co., Inc. (Docket Entry No. 148), and Plaintiff's Second Request of

Judge Campbell for a Hearing on the Defendants' Dispositive Motions to Dismiss the Above-Listed Consolidated Cases(Docket Entry No. 146).

The cases before the Court in this consolidation action involve claims originally asserted by Plaintiff Rock Abou-Sakher (Hereafter "plaintiff"), who is proceeding pro se against thirteen separate Defendants. These claims, originally asserted under 29 U.S.C. § 621 and 42 U.S.C §§ 1981, 1982, 1983, 1985, 1986, and 2000e, are based upon alleged property and employment interests which plaintiff alleges arose from a lease agreement between himself and defendant Humphreys County. Plaintiff asserts the unconstitutional denial of these rights, accomplished through "an ongoing, single-purpose conspiracy which originated in 1992, as the basis for this action. Although the issues of plaintiff's alleged property and employment rights have been litigated and decided adversely to him in Tennessee state court, Abou-Sakher v. Humphreys County, 955 S.W.2d 65 (Tenn Ct. App., March 27, 1997), perm. app. denied (Tenn. Sept. 13, 1997), plaintiff has pursued the instant federal litigation, seeking compensatory and punitive damages.

For the reasons stated below, the Magistrate Judge recommends that defendants' motions to dismiss be granted and that plaintiff's motion for a hearing on these motions be denied. In sum, plaintiff has repeatedly refused to provide discovery responses despite Orders of the Magistrate Judge and warnings that failure to provide such responses would lead to a recommendation of dismissal of this action.

II. REVIEW OF THS MOTIONS

A. Motion to Dismiss on Behalf of the Humphreys County Defendants[1]

1. Analysis of the motion

On October 3, 1997, Humphreys County defendants filed a motion to dismiss plaintiff's

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[1] "Humphreys County Defendants' include: Richard McCoy as Chairman of the Humphreys County Airport Authority;

Humphreys County Airport Authority; Humphreys County, Tennessee; Jaycee Rawlings as County Executive of Humphreys County and as Chairman of the Humphreys County Commission; John Lee Williams as attorney for Hymphreys County, Tennessee; Billy Hugh Link as member of the Humphreys County Board of Commissioners, Humphreys County Airport Authority, Humphreys County Airport; Travis Jenkins as Airport Manager, Humphreys County Airport; James Whittenburg as Member of Humphreys County Airport Authority; J.V. Stribling as member of the Humphreys County Airport Authority; Billy Cobb as member of the Humphreys Copunty Airport Authority; and James Barnes.

Various claims (which were consolidated pursuant to Order entered October 20, 1997 (Docket Entry No. 105)) pursuant to Rules 5, 16, 37 and 41(b) of the Federal Rules of Civil Procedure. As grounds for their motion, Humphreys County defendants assert plaintiff's failure and/or refusal to comply with the Orders of this Court regarding the service of pleadings, orders, and other court filings upon defense counsel, as well as his failure to comply with the Orders of this Court regarding the filing of Rule 16 Statements and Orders. Humphreys County defendants further allege a pattern of conduct calculated to harass and delay, leading to the incursion of unnecessary expense as well as the prejudice of their defense. Humphreys County defendants request dismissal with prejudice of all claims and an award of reasonable costs and attorneys' fees incurred as a result of plaintiff's alleged conduct, pursuant to Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure.

Plaintiff filed a reply in opposition to the Humphreys County defendants' motion on October 6, 1997 (Docket Entry no.89). In his reply, plaintiff asserts as the bases for his opposition the bad faith of defense counsel, the restraints upon his time and resources due to familial obligations, his "work product" privilege, and his misunderstanding of the Federal and Local rules of Civil Procedure. Id.

The factual assertions and legal arguments contained in the Motion to dismiss on Behalf of Humphreys County Defendants were incorporated by reference by the Motion to Dismiss on Behalf of Defendants McCoy in his Capacity as Editor of the News-Democrat and Kennedy Newspaper Co., Inc. (Docket Entry No. 93).

2. Conclusions of Law

"Under Federal Rule of Civil Procedure 37(b)(2)(C), a district court may sanction parties who fail to comply with its orders in a variety of ways, including dismissal of the lawsuit." Bass v. Jostens, Inc., 71 F.3d 237, 241 (6th Cir. 1995)(citing Bank One of

Cleveland, N.A. v. Abbe, 916F.2d 1067, 1073 (6th cir. 1990)). Rule 37(b)(2) provides in pertinent part:

> If a party . . . fails to obey an order to provide or permit discovery . . ., the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> (C) An order striking out pleadings of parts thereof, or staying proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof . . .

Fed. R. Civ.P. 37(b)(2). "The use of dismissal as a sanction for failing to comply with discovery has been upheld because it accomplishes the dual purpose of punishing the offending party and deterring similar litigants from such misconduct in the future." Bass, 71 F.3d at 241 (citing National Hockey League v Metropolitan Hockey Club, Inc., 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L Ed.2d 747 (1976)).

The Sixth Circuit has held that "[d]ismissal of an action for failure to cooperate in discovery is a sanction of last resort," but that it may be imposed "if the court concludes that a party's failure to cooperate in discovery is due to willfulness, bad faith, or fault." Patton v. Aerojet Ordnance Co., 765 F.2d 604, 607 (6th Cir. 1985). The thrust of this rule "is to presume that, if a party has the ability to comply with a discovery order and does not, dismissal is not an abuse of discretion." Regional Refuse Systems v. Inland Reclamation Co., 842 F.2d 150, 154 (6th Cir. 1988). Other factors relevant to the sanction of dismissal under Rule 37(b) include: (1) whether the adversary was prejudiced by the party's failure to cooperate: (2) whether the recalcitrant party was warned that failure to cooperate could lead to dismissal; and (3) whether less drastic sanctions were considered or imposed before dismissal was ordered. Id. at 155.

Similarly, Rule 41(b) of the Federal Rules of Civil Procedure provides for involuntary dismissal of a plaintiff's action upon motion by a defendant, or pursuant to the inherent power of the Courts " to clear their calendars of cases that have remained dormant because of the inaction or dilatoriness of the parties seeking relief." Vesely v. Cuyahoga Metropolitan Housing Authority, et al., 130 F.R.D. 83, 84-85 (N.D. Ohio, 1990)(quoting Link v. Wabash Railroad Co., 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)). Rule 41(b) provides in pertinent part:

> For failure of the plaintiff . . . to comply with these rules or any order of court, a defendant may move for dismissal of an action of any claim against the defendant. Unless the court in its order for dismissal

> otherwise specifies, a dismissal under this subdivision . . . operates as an adjudication upon the merits.

Fed.R.Civ.P. 41(b). The Sixth Circuit has held that dismissal of an action is an appropriate sanction when a plaintiff has engaged in "bad faith or contumacious conduct." Harris v. Callwood, 844 F.2d 1254, 1256 (6th Cir. 1988). Contumacious conduct is defined as conduct that is "stubbornly disobedient." See Webster's Third New International Dictonary 497 (1969) (unabridged).

Although a plaintiff proceeding pro se is held to "less stringent standards" than an attorney, see Haines v. Kerner, 404 U.S.

519, 520, 92 S.Ct. 594, 595, 30 L. Ed.2d 652 (1971), the violation by plaintiff of a number of pretrial orders issued by this Court justifies the imposition of the sanction of dismissal. The first instance of plaintiff's disregard for Court directives occurred with the serving upon Humphreys County defendants of his Notice of Unreasonable Notice to Give Deposition Duces Tecum (see Plaintiff's Motion for a Stay of Discovery, Docket Entry No. 11, Attachment), in which plaintiff refused to appear for his duly noticed deposition on January 21, 1997, and refused to produce the materials under subpoena. Plaintiff filed a Motion to Stay Discovery on January 21, 1997 (Docket Entry No. 11), which was subsequently denied by this court (Docket Entry No. 42). Plaintiff's refusal to cooperate in his scheduled deposition resulted in the delay of discovery, as well as defendants' incursion of needless expense in traveling to and from the deposition site.

The second instance of plaintiff's noncompliance with Orders of this Court arose with the filing by plaintiff of an objection to the first set of interrogatories propounded to him by defendant Richard McCoy (Docket Entry No. 19). The motion containing that objection was denied by the Magistrate Judge, with the Court issuing the following warning:

> This motion is DENIED, and the plaintiff is ORDERED to respond to

> defendants' discovery requests or the Magistrate Judge will recommend dismissal of his complaint under Fed. R. Civ.P.37(b).

(Docket Entry No. 40).

Despite this Order of the Court, however, plaintiff failed to respond properly to defendant McCoy's discovery requests by (1) producing an undifferentiated list of names in response to interrogatories which requested specific identification of witnesses and documents that could substantiate plaintiff's claims against each of the defendants; and (2) delivering, in response to defendant McCoy's document requests, four boxes of duplicative documents, video tapes, and audio tapes which were not indexed, catalogued, or otherwise produced in any format responsive to the requests.

In his response to Humphreys County Defendants' Motion to dismiss, plaintiff asserts the work product doctrine as justification for not complying with defendant McCoy's discovery requests, characterizing the requested specificity as an attempt to compel the disclosure of plaintiff's "thoughts as to what those documents prove. . ." "(Docket Entry No. 89). Although the applicability of the work product doctrine to the work product of nonlawyers is unsettled within the Sixth Circuit, the discovery requests at issue here clearly contemplate unprotected factual disclosures, as opposed to the "opinion work product" which is almost universally protected form disclosure. See In re Antitrust Grand Jury, 805 F.2d 155, 163-64 (6th Cir. 1986) (citing Hickman v. Taylor, 329 U.S. 495, 511, 67 S.Ct.385, 393, 91L Ed. 451 (1946). As a result, plaintiff's refusal to comply with defendant McCoy's discovery requests can be viewed as nothing other than contumacious, dilatory, and in direct contravention of the Order of this Court.

The third violation of an Order of this Court by plaintiff arose with regard to his failure to sign and date servings on the other parties to this action. As a result of plaintiff's failure to sign and date the certificate of service attached to defendants' copy of plaintiff's motion for default judgment against defendants McCoy and Rawlings in their individual capacities (Docket Entry No. 20), defendants were forced to file a motion to require dated and executed certificates of service (Docket Entry No. 21). In ruling on defendants' motion, this Court warned as follows:

> This motion is GRANTED and failure to comply may lead to a recommendation of dismissal because failure to serve can cause prejudice to a party.

(Docket EntryNo.22).

Despite this admonition, however, plaintiff failed to serve a copy of his rule 16 Statement and Order upon counsel for the Humphreys County defendants.

Furthermore, plaintiff failed to serve counsel for the Humphreys County defendants with a copy of his Certificate of Readiness and Motion to Set a Date for Trail (Docket Entry No. 131). Although the certificate of service attached to this certificate and motion was complete, no such motion or pleading was ever received by Humphreys County defendants, who did not learn of plaintiff's filing until receiving the response and objection to that motion filed by defendants McCoy and Kennedy Newspaper, Inc. (Docket Entry No. 132)

The fourth instance of plaintiff's violation of an Order of this Court arose with his filing of an incomplete Rule 16 Statement and Order, in contravention of Pretrial

Order No. 1 (Docket Entry No. 82) and the Court's verbal warning to plaintiff that failure to comply with the Court's requirements concerning submission of the Rule 16 Statement and Order would result in a recommendation of dismissal. In his response to Humphreys County defendants' motion to dismiss, plaintiff asserts the restrictions on his time and resourced due to familial obligations as justification for his failure to file a complete statement. However, the information needed to complete plaintiff's Rule 16 filing[2] by the September 25, 1997, deadline is the same information which was requested of him in defendant McCoy's interrogatories and document requests, which were served upon him on February 12, 1997, and to which plaintiff was ordered to respond by this Court on May 12, 1997 (Docket Entry No. 40). Thus, it appears that plaintiff had seven and one half months in which to discover and communicate the information necessary to respond to defendants' discovery requests and comply with Pretrial Order No. 1. His failure to provide said information, and the resultant violation of Orders of this Court, is therefore found by the Magistrate Judge to be willful, and motivated by a desire to delay discovery in this case.

In Harmon v. CSX Transportation, Inc., 110 F. 3d 364, 366-67 (6th Cir. 1997), cert.

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[2] Pretrail Order No. 1 designates, in pertinent part, that Plaintiff's Rule 16 Statement and Order "shall include the following: A complete statement and description of plaintiff's theories of recovery as to each separate defendant . . .; and a complete description of each document, videotape, audio tape or other tangible thing which plaintiff asserts is relevant to and supportive of each claim made against each defendant, with specific reference to and explanation of the relevance of that portion of each such document, tape or tangible thing so identified." denied, 118 S. Ct. 178 (U.S., Oct. 06, 1997)(No. 97-229), the Sixth Circuit restated the factors to be considered

in reviewing a district court's dismissal of a complaint for an abuse of discretion: "(1) 'whether the party's failure to cooperate in discovery is due to wilfullness, bad faith, or fault'; (2) 'whether the adversary was prejudiced by the dismissed party's failure to cooperate in discovery';(3)'whether the dismissed party was warned that failure to cooperate could lead to dismissal'; and (4)'whether less drastic sanctions were imposed or considered before dismissal was ordered."' Id. (quoting Regional Refuse Systems, 842 F.2d at 153-55)

As to the first factor listed above, a plaintiff's misconduct will be construed as wilfull unless his failure to comply with discovery orders resulted from an inability to comply. Bass, 71 F.3d at 241. Here, it is apparent to the Magistrate Judge that plaintiff's failure to attend his duly noticed deposition, his failure to sign and date certificates of service attached to filings served upon defendants, his failure to serve defendants, and his failure to complete his Rule 16 Statement and Order were in fact wilfull and intended to delay discovery in these proceedings. Plaintiff was at no time restrained form compliance by circumstances beyond his control, id at 243, but rather by intransigence and gamesmanship exhibited toward his adversaries. Plaintiff's expression of his desire for a spirit of cooperation and his disclaimer of any action or inaction taken in bad faith will not suffice to afford him an opportunity to further protract this litigation. "[M]isconduct is not any less misconduct because it is executed under a veneer of good intentions." Regional Refuse Systems, 842 F.2d at 156.

As to the second factor, there can be no doubt that defendants were prejudiced by plaintiff's failure to comply with Orders of this Court regarding discovery. Plaintiff's refusal to answer interrogatories completely and to demonstrate the relevance of the materials produced to the allegations in his complaint prevented defendants from gathering evidence to support their defenses. Plaintiff's failure to appear for his discovery deposition further delayed and frustrated defendants' attempt to compose their defense. Plaintiff's failure to serve counsel for defendants with a copy of his Rule 16 Statement and Order resulted in defendants' not receiving a copy until they were able to obtain it from another source only three days prior to the deadline for filing of defendants' responsive Rule 16 Statement. In sum, plaintiff's disregard of this Court's Orders to provide and permit discovery has handcuffed defense counsel in its efforts to ascertain and assert facts essential to the protection of its clients' interests, thereby prejudicing defendants.

As to the third factor, the several warnings of the possibility of dismissal issued to plaintiff by this Court have been referenced throughout this report, and need not be restated here.

As to the fourth factor, the consideration or imposition of lesser sanction has not been articulated on the record in this case. The Sixth Circuit, however, has found that this factor "requires[s] particular caution 'in the absence of contumacious conduct."' Harmon, 110 F.3d at 368 (quoting Freeland v. Amigo, 103 F.3d 1271, 1280 (6th Cir. 1997)). Given plaintiff's record of disobedient and dilatory conduct with regard to discovery in this case, the Magistrate Judge concludes that the extreme sanction of dismissal is warranted. In Harmon, the

Sixth Circuit upheld the use of this sanction even when no lesser sanctions had been considered: "Presented with a record of sufficiently egregious conduct, then, this court need not hesitate to conclude that district court has not abused its discretion by ordering dismissal as the first and only sanction." 110 F.3d at 369. Plaintiff has established just such a record in the instant case.

In Insurance Corp. of Ireland v. Compagnie Des Bauxites DeGuinee, 456 U.S. 694, 707, 102 S.Ct.2099,2107,72 L Ed.2d 494 (1982), the United States Supreme Court stated that the sanction of dismissal under Rule 37(b)(2) "must be specifically related to the particular 'claim' which was at issue in the order to provide discovery." The instant case consists of several consolidated actions, with separate harms alleged in each action. However, the singular claim from which discovery was joined, and through which this Court was impelled to consolidate these actions, is plaintiff's claim that each of the named defendants acted "in the purposeful furtherance of the same ongoing, single-purpose conspiracy . . . to deprive the Plaintiff of his rights and to damage him" (Combined Rule 16 Statement, Docket Entry No. 103, p.3). For this reason, and considering the pervasive impact of plaintiff's discovery abuses upon each of the named defendants, the Magistrate Judge finds specific relation between the claim at issue in this Court's discovery orders and the sanction of dismissal of this consolidated action.

In light of the foregoing, the Magistrate Judge recommends dismissal of this consolidated action, pursuant to Fed. R.Civ.P.37(b)(2).

B. Renewed Motion to Dismiss on Behalf of Defendants Richard McCoy in his Capacity as Editor of the News-Democrat and Kennedy Newspaper Co., Inc.

1. Analysis of the Motion

On October 6, 1997, defendants Richard McCoy and Kennedy Newspaper Co., Inc. filed a motion to dismiss plaintiff's remaining claims against them pursuant to Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure. In that motion, defendants adopted in full the motion and arguments set forth in the Motion to dismiss on Behalf of the Humphreys County Defendants, discussed above.

In addition, on March 16, 1998, defendants McCoy and Kennedy Newspaper Co., Inc. filed a Renewed Motion to Dismiss. This motion incorporated by reference the Renewed Motion to Dismiss filed by the Humphreys County defendants on March 18, 1998 (Docket entry No 150). As further grounds for the dismissal of this action, defendants assert plaintiff's failure to respond to discovery requests referenced in an Order of this Court (Docket Entry No.

139), issued upon motion of the defendants to compel disclosure.

2. Conclusions of Law

Pursuant to the Order of this Court (Docket Entry No. 102), defendants McCoy and Kennedy Newspaper Co., Inc., as well as the Humphreys County defendants, were directed to file motions to compel responses to their discovery requests. In its Order of February 5, 1998, this Court granted defendants' motions to compel discovery:

> The plaintiff is ordered to answer fully each discovery request and shall provide his responses thereto within thirty (30) days of the date of entry of this order. In light of his earlier omissions on discovery matters, the plaintiff is informed that the failure to so

respond will result in a recommendation of dismissal of this action.

(Docket Entry No. 139). As of the date of this report, defendants have received nothing from Plaintiff in response to their discovery requests. This failure to respond is in direct contravention of the February 5, 1998, Order of this Court.

For the reasons stated above, plaintiff's failure to obey the Order of this Court can be viewed as nothing other than willful and in bad faith. The Magistrate Judge concludes that plaintiff's record of contumacious conduct and dilatory tactics in this litigation demands the dismissal of this action pursuant to Rule 37(b) of the Federal Rules of Civil Procedure.

C. Plaintiff's Second Request of Judge Campbell for a Hearing on the Defendants' Dispositive Motions to dismiss the Above-Listed Consolidated Cases

1. Analysis of the Motion

On February 25, 1998, plaintiff filed a motion for a hearing on defendants' motions to dismiss, charging that the abuses alleged in defendants' motions are the result of confusion created by contradictory orders of the Magistrate Judge, bad faith on the part of the defendants' counsel, plaintiff's own lack of experience in the prosecution of a federal case, and the holding of plaintiff to "a strict adherence to the Rules, and the relaxed holding of the Defendants' counsel to the same Rules" (Docket entry No. 146).

Defendants contend that "further hearing regarding the pending motions to dismiss would serve no purpose other than allowing the plaintiff a forum for re-hashing the same petty and unmeritorious arguments..." (Response and Objection of Humphreys County Defendants to Plaintiff's Second Request for Hearing, and Renewed Motion to Dismiss, Docket Entry No. 150, p.5).

2. Conclusions of Law

At the conclusion of this motion, plaintiff requests that this Court hold a hearing to determine if he is guilty of acting in an abusive manner. It is plaintiff's desire that, at the requested hearing, "the chargers be specific and produce exhibits and dates, and the Plaintiff will do the same." It is exactly this specificity which defendants have been seeking through discovery requests and motions to compel discovery, and which plaintiff has heretofore refused to provide. To grant plaintiff a hearing on these matters would work a grave injustice on defendants, who have been seeking the same result through proper channels of discovery from the outset of this litigation. The Magistrate Judge concludes that plaintiff's motion for a hearing should be denied.

III. RECOMMENDATIONS

For the reasons stated, the Magistrate Judge recommends that the Motion to

Dismiss on Behalf of Humphreys County Defendants (Docket Entry No. 88) be granted; that the Renewed Motion to Dismiss on Behalf of Defendants Richard McCoy in his Capacity as Editor of the News-Democrat and Kennedy Newspaper Co., Inc. (Docket Entry No. 148) be granted; and that Plaintiff's Second Request of Judge Campbell for a Hearing on the Defendants' Dispositive Motions to dismiss the Above-Listed Consolidated Cases (Docket Entry No. 146) be denied. Furthermore, the Magistrate Judge recommends that defendants be awarded reasonable costs and attorney's fees pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure, Under Rule 72(b) of the Federal Rules of Civil Procedure any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed to this Recommendation in which to file any responses to said objection. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985),reh'g denied, 474 U.S. 1111 (1986)

ENTERED this the 25th day of June, 1998.

WILLIAM J. HAYNES, JR

United States Magistrate Judge

FILED U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
JULY 10, 1998
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

ROCK ABOU-SAKHER	CASE NO. 3:96-1131 as consolidated with 3:97-0450; 3:97-896, 3:97-0777; 3:97-0771;and, 3:97-0772 JUDGE TODD J. CAMPBELL MAGISTRATE JUDGE HAYNES

VS.

RICHARD McCOY, et al.,
DEFENDANTS.

PLAINTIFF'S OBJECTION TO REPORT AND

RECOMMENDATION OF MAGISTRATE JUDGE WILLIAM J. HAYNES, JR. ENTERED ON JUNE 26, 1998, AND SERVED ON THE PLAINTIFF JULY 1, 1998 AS DOCKET NUMBER 167

1.) Now comes the Plaintiff, Rock Abou-Sakher, and files this objection to the *Report and Recommendation* entered by the Magistrate Judge, William J. Haynes, Jr., on June 26, 1998, and received by the Plaintiff on July 1, 1998.

2.) If a Pro Se Plaintiff files complaints in a Court, and the Court engages in wrong doing, and the Plaintiff remains silent, his complaints will, in this case at least, most likely be, upon the recommendation of the wrong doer, in this case the Magistrate Judge, William J. Haynes, Jr., be dismissed. If the Pro Se Plaintiff attempts to reveal or expose the wrong doing, he will most likely be adjudged as showing disrespect for the Court and held in contempt. The showing of disrespect or contempt for the Court is grounds for dismissal. This is a catch 22 situation where the Pro Se Plaintiff is damned if he does and he is damned if he does not.

Such is the situation that the Plaintiff, Rock Abou-Sakher, finds himself in now.

3.) Apparently, under the direction of the Sixth Circuit Court of Appeals, where that Court has said that Pro Se litigants should be viewed with suspicion and avoided like the plague, this District Court has taken those directions a step or two farther. In fact, this District Court has, as did each of the defendants in his own turn, joined into the furtherance of the ongoing, single-purpose goal of a conspiracy designed to deny this Pro Se Plaintiff his Constitutionally guaranteed civil rights.

4.) The Courts have, of course, insulated themselves with the Doctrine of Absolute Judicial Immunity. The reasons for this immunity are understood by this Plaintiff. Courts cannot effectively operate under fear or threat of any kind. However, that should not be an absolute bar to exposure of wrong doing on the part of the Courts, and that exposure should not subject the exposor to sanctions of any kind. It is true that charges of wrong doing against a Court must be well thought out, and must be capable of being proved, but the standard of proof should not be set so high as to cause ordinary men to shiver and quake at the thought of meeting that burden. It is with this thought in mind that this Plaintiff has decided not to sit silently while his civil rights crumble around him.

5.) The Magistrate Judge, William J. Haynes, Jr., in his *Report and Recommendation*, entered on 6-26-98, as Docket Number 167, in the above styled cause of action, has recommended that all of the Plaintiff's claims, in all of the consolidated actions, be dismissed. The Magistrate Judge has recommended that the dismissal of all of the Plaintiff's civil actions be Ordered without any hearing or opportunity for the Plaintiff to defend himself against the charges levied against him by the Magistrate Judge. The Magistrate Judge has further recommended that the Defendants be awarded costs and attorneys fees in connection with all of the consolidated cases. This is an overly harsh and unjustifiable recommendation.

6.) These recommendations have not been made substantially on the basis of the issues presented by the claims made in these consolidated cases, but made almost entirely on the basis of four instances of alleged procedural misconduct on the part of the Plaintiff. The Magistrate Judge, in effect, recommends that all of the Plaintiff's claims become subservient to, and sacrificed on the basis of, an inconsistent interpretation of the Federal Rules of Civil Procedure

7.) Assuming, arguendo, that the Plaintiff has been guilty of procedural mistakes in the pursuit of his claims, there are other more justicious ways to correct and/or rectify those mistakes. The Magistrate Judge, at first glance, appears to have given justification for such harsh action as the dismissal of all of the Plaintiff's claims. However, a closer examination of the justification offered, by the Magistrate Judge, reveals that its foundation is erroneously and fraudulently based.

8.) The filing of this objection is an attempt to point out those errors and frauds. The charges levied by the Magistrate Judge will be addressed in essentially the same order that they appear in the Magistrate Judge's Report and Recommendation.

OBJECTIONS TO: 1. INTRODUCTION

9.) In the latter part of paragraph 2, page 2, (paragraphs unnumbered) of the Report and Recommendation the Magistrate Judge states that the "...issues of plaintiff's alleged property and employment rights have been litigated and decided adversely to him in Tennessee state court...."(emphasis mine) This is a highly prejudicial, misleading, and unjustified statement made by the Magistrate Judge. What the Magistrate Judge failed to point out was that, first, the decision cited in support of the statement was adverse to the Plaintiff only in part; that decision also gave the Plaintiff a property interest through a holdover tenancy until March 1, 1996; and second, the decision did not say that the Plaintiff did not have employment rights; it only said that any such employment rights had not been awarded by the language of the Contract Agreement itself; and, third, a Humphreys County Jury of twelve citizens, after hearing all of the facts presented at trial on the same question of property interest in August, 1997, found for the Plaintiff on what was presented to them as a question of fact. It was in another case entirely that the same question of fact was decided as a question of law, and then used to overturn the jury verdict. Abou-Sakher v. Humphreys County, 955 S. W.2d 65 (Tenn. Ct. App., March 27, 1997) perm. app. denied (Tenn. Sept. 13, 1997).

10.) The Magistrate Judge has, in his Report and Recommendation, made it appear that the Plaintiff had no rights or interests at all on which to base his claims, and that it had been so decided by the Tennessee State courts. The Plaintiff views this statement as deception by omission. The implied charge in that paragraph of the Report and Recommendation is that the Plaintiff had no rights or interests at all, and that the state courts had so decided, and the various Complaints should not have been filed in the first instance. This lead-in paragraph would then make it easier to dismiss the Plaintiff's claims on most any basis, since he had no right to be in the Court in the first place. (Pro Se Plaintiffs should be viewed with suspicion and avoided like the plague, says the Court of Appeals.) But, even if that astounding and incredible directive, by the Court of Appeals, is true, should the deck be unfairly stacked against a Pro Se litigant even before the cards are dealt

11.) This statement by the Magistrate Judge is a narrow and misleading view of the state court decisions and presents an unfair basis for the harsh recommendations made by the Magistrate Judge. The Magistrate Judge erred in his failure to consider the full impact and results of the state court actions. And, from that error, he proceeded to build his foundation with further one-sided presentations of the events, actions, and decisions used as a basis for his recommendations.

12.) In paragraph 3, page 2, of the Report and Recommendation, the Magistrate Judge states that the Plaintiff: " ...has repeatedly refused to provide discovery responses despite Orders of the Magistrate Judge and warnings that failure to provide such responses would lead to a recommendation of dismissal of this action." This charge is awesome, and it is not true. The Report and Recommendation goes into further detail on this charge in various and numerous paragraphs throughout and cites four alleged instances of the Plaintiff's violation of the Court's Orders. This Plaintiff has never, in any instance, knowingly violated a Court Order.

13.) If the Magistrate Judge is correct in his presentments and recommendations and the Court accepts them as correct and does dismiss these actions, the Plaintiff, for his part, will have been dismissed because of his ignorance of, and inexperience with, Federal Discovery Procedure and not because he is guilty of any " contumacious conduct, bad faith, dilatory actions, willful abuse of the process, egregious conduct, or motivated by a desire to delay discovery;" and, for the Magistrate Judges' part, the Plaintiff's claims will have been dismissed because of judicial misconduct on the part of the Magistrate Judge, including, but not limited to: persistent ex-parte communications with the defense counsel; and, the deliberate misleading, from the bench, of the Plaintiff, and then using the fruits of that fraud against the Plaintiff; and, the public showing, from the bench, of open contempt for the Plaintiff; an unjust challenge to the honesty and integrity of the Plaintiff; and, the failing to give the Plaintiff's filings a fair, equal, and impartial reading and consideration; and, the procedural manipulations deliberately designed to unnecessarily, unfairly, and unjustly burden the Plaintiff to the point that he would naturally fail to meet deadlines, which fact could later be used, against the Plaintiff, as justification for the recommendation of dismissal.

OBJECTION TO FIRST INSTANCE CHARGED

14.) As to the " first " alleged instance of Plaintiff's disregard for Court directives, the Plaintiff offers the following:

15.) On December 27, 1996, the Plaintiff made arrangements with the Defendant, Jaycee Rawlings, who was the Humphreys County Executive, to examine the County files in storage, on January 21, 1997. This was the earliest the Plaintiff would be allowed to gain access to the files, since the Defendant, Jaycee Rawlings, said that he, or someone appointed by him, would have to be with the Plaintiff when he saw the files and everyone was busy with inventory.

16.) On January 13, 1997, one of Defendant Rawlings' attorneys, John Lee Williams, handed the Plaintiff a NOTICE TO GIVE DEPOSITION DUCES TECUM. This Notice instructed the Plaintiff to appear on January 21, 1997, the same date previously made for his inspection of the stored County files. John Lee Williams knew of this previous arrangement, and did deliberately set the date of the deposition, with no prior good faith effort to arrange for an equitable date, to prevent the Plaintiff from gaining access to the stored County files by keeping him otherwise detained and occupied giving a deposition. This was trickery, not discovery. The Plaintiff needed access to obtain materials necessary to the Preliminary Injunction evidentiary filing due on January 24, 1997, just three days later, a filing he had to withdraw because he was denied access to needed evidentiary materials for the hearing. The defendant, Jaycee Rawlings, had made the Plaintiff wait almost a month, December 27 to January 21, before he could access the stored files. And then, a few days before the access was to be granted, Defendant Rawlings' attorney, John Lee Williams, in a spirit of teamwork with the defendant, attempts, by trickery, to prevent the Plaintiff from gaining access to the stored files with the deposition Notice. This was an abuse of the discovery process.

17.) The Notice of Deposition Duces Tecum, and its specific timing, was a sham, a pretext, introduced for a purpose other than the purpose claimed. There was no particular hurry or need for this Deposition to be taken on that specific day, January 21, 1997, and prior to good faith efforts to produce, without Court Action, a day for the deposition agreeable to all parties.

18.) On January 15, 1997, two days after receipt of the Notice of Deposition, the Plaintiff mailed a NOTICE OF UNREASONABLE NOTICE TO GIVE DEPOSITION DUCES TECUM, which was received, by the Attorney, John Lee Williams, on January 17, 1997. This Notice expressed objection to the unreasonable, as to time, Notice by the Defendant's Notice of January 13, 1997.

19.) On or about January 17, 1997, Attorney, John Lee Williams prepared a letter headed " VIA FEDERAL EXPRESS FOR DELIVERY ON SATURDAY, JANUARY 18, 1997." Federal Express does not have a Saturday delivery in McEwen, Tennessee. It must be presumed that Attorney, John Lee Williams, realized this and subsequently arranged for the Chief of the McEwen police department to deliver the letter to the Plaintiff.

20.) That letter stated that my objections were invalid and that the Notice complied with the Rules of Federal Procedure, particularly Rule 30(b)(1), and that I would be expected to appear on January 21, 1997, at 9:30 a.m. The letter stated that pursuant to Rule 30(b)(1), only five days was " generally considered " reasonable Notice. The Plaintiff could not find such a generalization in the Federal Rules, although there was such a generalization in the state rules, and the Plaintiff did not realize that the Federal Rules of Civil Procedure were only to be generally followed, or that five days would be considered as constituting a " reasonable notice " regardless of the circumstances. It should especially be noted here that the certificate of service attached to this Notice, on January 13, 1997, did not reflect service on the remainder of the parties to the action, and was not signed and dated. It should be further noted that this failure to sign and date, by defense counsel, was done prior to the filing of a Motion, by the defense counsel, for and Order requiring the Plaintiff to sign and date his servings on the defendants. The Magistrate Judge granted the Defendants' Motion.

21.) The Plaintiff believes that adequate Notice had been given to the Defendants to cancel their plans for this Deposition, until the Plaintiff had been given a chance to present his argument to the Court. In point of fact, the Plaintiff believes that the Court should closely examine the motives of the Noticers, and the possible deliberate misuse of the Federal Rules to thwart the Plaintiff's discovery, and because of this belief, the Plaintiff did thereafter ask for a hearing on such a Motion. The Motion and the request for a hearing was denied several months later. The Plaintiff was never served again with a Notice or request to submit to deposition, albeit he had told the defense counsel that he was willing to be deposed at any reasonable agreed upon time. No time was ever again proposed by the defense counsel.

22.) The Certificate of Service on the Notice, of January 13, 1997, handed to the Plaintiff, by Attorney Williams, listed no party, other than the Plaintiff. Rule 30(b)(1) F.R.C.V.P., requires that written notice be given to every other party to the action. This was not certified as to having been done, and the Plaintiff should not be left to guess if a proper service had been affected. The lack of Notice to the other parties was a defect that could have negatively affected the Plaintiff at a later date. It should also be noted that this defect occurred before the filing of the Sign and Date Motion, (to be discussed later in this paper) filed by defense counsel and granted by the Court.

23.) A Pro Se Plaintiff is excluded from a case management conference by Rule 11(b)(2)b., of the Local Rules of Court. This Rule renders a Pro Se Plaintiff vulnerable to an unjust raid on the Plaintiff's resources, time, and energy bank. If the Plaintiff had not been proceeding Pro Se, and had been proceeding by representation, the defendants' representatives would have been barred by Rule 11(e)a.1., in that they would have been required to delay such discovery, as then sought to be had, until direction had been obtained from a case manager or a case management order; or, pursuant to Rule 11(e)(1)a.2, they would have been required to file a motion showing a need that clearly outweighed the need for planning and limitations on discovery through the case management conference and case management

Order, wherein the Plaintiff would have had the opportunity to present his objections, and the reasons therefor, to the manner of Discovery sought by the Defendants. That playing field would be more level than the one on which an unrepresented Plaintiff must compete. The Magistrate Judge simply declared that the Plaintiff refused to appear for his duly noticed deposition on January 21, 1997, for no reasons other than to delay discovery and cause the defendants needless expense in traveling to and from the deposition site. This is a totally unfair and unjust assessment of the facts. A notice such as the one served on the Plaintiff on January 13, 1997, that fails to certify that it has been served to all of the parties, in an action, and is not signed and dated, does not constitute being " duly noticed." (emphasis mine.)

24.) Since it cannot be known, from a reading of the Local Rules of Court, nor from a reading of the Federal Rules of Civil Procedure, the Plaintiff then asked this Court, in his Motion to indicate when discovery may commence in cases exempted from the Cost and Delay Reduction Plan, but which do require discovery. The Court has never made a ruling on that question, it has been ignored.

25) The Attorney, John Lee Williams, and the Attorney, Joseph R. Wheeler, and the Attorney, Thomas I Carlton, Jr., said that reasonable notice, pursuant to Rule 30(b)(1), of the Federal Rules of Civil Procedure, is " generally considered five days (excluding Saturdays, Sundays and Holidays) " So, even by their own reckoning, only four days Notice was given to the Plaintiff. The Notice was handed to the Plaintiff at approximately 7:00 p.m. at a meeting of the Humphreys County Board of Commissioners, on January 13, 1997. Of the days between January 13, 1997, the day of the notice, and January 21, 1997, the day of the deposition, one was Saturday, one was Sunday, and one was a Holiday. That left, under the rules, only four days notice. And even this, only if it is " generally " considered that five days is adequate Notice; and, if it is also " generally " considered that a Pro Se Plaintiff would know what is " generally " considered in the Federal legal system. If five days is adequate, the rule should say so. If four

days is adequate, the Rule should say so. The fact that the Rules say " adequate notice " leaves the door open to allow for various circumstances. Plaintiff says that five days was not adequate Notice in this instance. Plaintiff says that the Defendants had adequate Notice to cancel and reschedule the deposition before incurring the expense of traveling to the deposition site.

26.) The Attorneys, signing the Notice, list Rule 30 (b)(1) as the source of the adequacy of five days notice for the taking of a Deposition Duces Tecum. The Plaintiff was unable to so read that provision. The Plaintiff mentions Rule 30(a)(2). and Rule 30(a)(2)(C) to point out that leave of Court is required, if a party is represented, and in the absence of a written stipulation, or an expectation that the Plaintiff will leave the United States and be unavailable for examination in this country. The Plaintiff had signed no stipulation; was not going to voluntarily leave the country; and, no meeting had been held to plan for the cost effective and speedy resolution of Discovery matters, and only because the

Plaintiff is Pro Se.

27.) The Plaintiff contends that the Rules of Court, and the Rules of Procedure, and the Cost and Delay Reduction Plan, should not propel the wheels of justice at a speed designed to run over an unrepresented party, This Plaintiff has made a good faith effort to obtain representation. This Plaintiff is not proceeding Pro Se out of some overblown ego problem. This Plaintiff is proceeding Pro Se in that he has no choice. This Plaintiff realizes that no special consideration can be shown him by the Court without a resultant negative effect on the Defendants, and asks for none. All this Plaintiff asks is that he be extended the same level of courtesy, consideration, and respect as any attorney appearing in this Action, and that the Court recognize the injustice that can be dealt to a Pro Se party by Rule 11(b)(2)b, of the Local Rules of Court, unless the presiding Judicial officer, to whom this case is assigned, subjects this case to coverage of the Plane of Customized Case Management, by Order, pursuant to Rule 11(b)(1)b.

This Order, is what the Plaintiff sought in his Motion for a Stay of Discovery.(docket# 11) That Motion was denied four months later on 5-12-97. (docket#42)

28.) The denial of that Motion occurred almost exactly four (4) months after the Notice was served on the Plaintiff. It is grossly unfair to say that the Plaintiff had no right to resist an appeal to the Court on an action that he considered a sham and a pretext and being interposed solely to block him from obtaining discovery of his own, especially since his arrangements had been made a month before the defense counsel purposefully selected the same date for their deposition,

29.) Attorney, John Lee Williams, in his January 17, 1997 letter, said that the Plaintiff " should have had the documents or information in categories (1), (2), and(3) before making the allegations in the complaint. " The Plaintiff did and does have sufficient evidence to support the allegations of his Complaint. What the Plaintiff said was that he does not have " all " of the documents that he intends to introduce to make the case even stronger. It is not a requirement that a Plaintiff have every evidence he will introduce at trial on the day that he files his Complaint. The Notice, of the Defendants, simply specified "all "evidence to be presented in this action. The Preliminary Injunction was a part of the Action, and the Plaintiff did not yet have all of the evidence needed to support his application. That evidence was being held by the County in storage, and the Defendants were attempting to prevent the Plaintiff from gaining access to it, by this Deposition Duces Tecum on January 21, 1997, the date arranged over four weeks earlier, for access to the County files needed by the Plaintiff; and, the date of the deposition set, being the same date, January 21, 1997, is too much for mere coincidence; it was deliberately planned to deny Plaintiff evidence needed for his January 24, 1997 evidentiary hearing.

30.) The Plaintiff asked the Court to issue the Protective Order of a stay of Discovery, (docket# 11) conforming with Rule 26(c)(2) of the Federal Rules of Civil Procedure; and, in that Order, direct that disclosure or discovery may be had only on specified terms and conditions, including a designation, by the Court, of the time and the place. The Plaintiff did this to prevent future discovery problems. The Court did not act on the Motion until four months later. The exclusion of a Pro Se Party from the Cost and Delay Reduction Plan, of the United States District Court, for the Middle District of Tennessee, should not place an unrepresented Party at a disadvantage to a represented party.

31.) For the Magistrate Judge to state that his first instance basis for his recommendation for dismissal is that the Plaintiff: " refused to appear for his duly noticed deposition on January 21, 1997, and refused to produce the materials under subpoena, " without saying more, as to possible reason why, is unfair. The Plaintiff had given the defense counsel sufficient time to prevent the expenditure of time and money necessary to travel to Waverly, Tennessee, while awaiting a Court decision on the legitimacy of the Plaintiff's arguments. The Plaintiff had no way of knowing, at that time, that the Court would deny his

Motion four months later. The Plaintiff honestly believed that his arguments, as outlined above, were legitimate concerns. It is not true that he refused to attend the deposition for reasons of " contumacious conduct, bad faith, dilatory action, willful abuse of the process, egregious conduct, or was motivated by a desire to delay discovery." The Plaintiff refused to attend because he had a previous commitment, of which defense counsel knew before setting the date, and because he knew that dirty tricks were afoot. This later proved to be true in the very words of John Lee Williams.

32.) Plaintiff's exhibit number 14-A is an audio tape where John Lee Williams, attorney for the Humphreys County Defendants, on January 22, 1997, the day after the day set for the Plaintiff's inspection of the County records and the day set for the deposition, admitted that he told the Plaintiff that he could see the county records on January 21, 1997. He told the Plaintiff to appear at 1:00 p.m. and Travis Jenkins, a Humphreys County Defendant would be there to oversee the inspection. When the Plaintiff arrived to inspect the records, he was kept waiting in the outer office of John Lee Williams. Realizing that he had been taken for another ride, the Plaintiff left. John Lee Williams admitted that he never intended the Plaintiff to see the records and complained because the Plaintiff left, saying that he had an office full of attorneys, court reporters, and county officials waiting to take the Plaintiff's deposition. John Lee Williams had lured the Plaintiff to his office under false pretenses. He had told the Plaintiff to come on January 21, 1997 to see the records and then admits that he instead had planned to take the Plaintiff's deposition and not to let the Plaintiff see the records.

33.) The Plaintiff has never had any aversion to having his deposition taken. In point of fact, he looked forward to it. He believed that he might learn more about the defense strategy through the questions asked. The Plaintiff told defense counsel that he was ready to be deposed at anytime a mutually convenient time could be worked out. The defense counsel did not approach the Plaintiff's deposition openly and honestly; they schemed and connived and operated under false pretenses, and they did this to block Plaintiff's access to discovery.

34.) Proof of this is the emergency measures they took to serve the Notice in time to set the date specifically for January 21, 1997. First, Notice was hand delivered at a meeting of the County Commission. Then the police department of McEwen, Tennessee was enlisted to deliver it on the Saturday before the scheduled deposition. What was the hurry? Their hurry was that they simply wanted to block the Plaintiff from inspecting the county records before the evidentiary hearing on January 24, 1997. And, in spite of this, and with no mention of this, the Magistrate Judge accuses the Plaintiff of gamesmanship. The Plaintiff does not consider this matter to be a game. There has been no Notice of Deposition in the seventeen (17) months that have since passed. So, they must not have been in as much of a hurry to take the Plaintiff's deposition as in a hurry to block the Plaintiff's discovery on a specific day, January 21, 1997.

35.) Now, if one lawyer, for example, wanted to depose another lawyer's client, would he call him to work out an agreeable time or would he rush around to force the deposition at what he knew to be an unreasonable time? I suspect that he would exercise the courtesy necessary and call the other attorney to set up a convenient time for the deposition. And, if an attorney did send Notice to another attorney would there be an attempt to work out any problems with the timing? The Answer is, of course, yes. That is how it should " generally " be done. But, not in this case. This is another example of a Pro Se being forced to a lower standard of treatment and consideration in the Court and by the Rules of the Court.

36.) It has now been more than seventeen (17) months since the date of the event and not once in those seventeen (17) months has defense counsel mentioned, in any way or form, taking the deposition of the Plaintiff in these cases. If the Plaintiff was guilty of any " contumacious conduct, bad faith, dilatory actions, willful abuse of the process, egregious conduct, or motivated by a desire to delay discovery " in the actions he took, then levy the cost and attorneys fees against him for his actions. The Defendants have not been harmed, the facts are the same now as they have been for the last seventeen (17) months, and the Plaintiff has stood ready for the past seventeen (17) months to give his deposition and the defense counsel is aware of this. There have been two case management status conferences held during that seventeen (17) months and the defense counsel did not mention, at either conference, their desire to depose the Plaintiff. Now, the Magistrate Judge says that the Plaintiff simply refused to attend his deposition, that's all there is to it, and his claims should all be dismissed. Fair and impartial?

OBJECTION TO SECOND INSTANCE CHARGED

37.) As to the " second " instance of Plaintiff's alleged " noncompliance with Orders of the Court...." the Magistrate Judge (paragraph 12, page 6) says " Despite this Order of the Court, however, plaintiff failed to respond properly to defendant McCoy's discovery requests by (1) producing an undifferentiated list of names in response to interrogatories which requested specific identification of witnesses and documents that could substantiate plaintiff's claims against each of the defendants; and (2) delivering, in response to defendant McCoy's document requests, four boxes of duplicative documents, video tapes, and audio tapes which were not indexed, catalogued, or otherwise produced in any format responsive to the requests. The four boxes were not all delivered to Defendant McCoy. That statement is misleading. (emphasis mine)

38.) First, the Court Order, (paragraph 11, page 6) said only that the Plaintiff was to respond to the discovery requests and the Plaintiff did that before the Motion was denied and the Order to respond and the Warning was given.

39.) As to the " undifferentiated " list of names and the unindexed and uncatalogued documents and tapes, the Plaintiff offers the following: First, neither the Order nor the Rules of Discovery said anything about differentiating, indexing, or cataloging. Each paper document was given an exhibit number and so labeled. Each audiotape was given an exhibit number and so labeled. Each videotape was given an exhibit number and so labeled. The Plaintiff labored hard to assemble and label every exhibit and he thought he was doing so correctly. In point of fact, the Plaintiff still thinks that he acted properly. What the defendant McCoy requested was, and I quote: " all " that you have to substantiate your claims. I honestly and diligently tried to responsively answer that request. There were hundreds of paper documents, and almost sixty (60) audio and videotapes. The Plaintiff worked late into the night for many nights to give the defendant what he had asked for and that was " all " that I had. The reason there were four boxes is because the rules said that I had to serve this answer on all counsel who did not share an office. There were four counsel at that time that met that criteria. The Plaintiff's answer to that request cost the Plaintiff considerable money. There can be no question to a reasonable mind that the Plaintiff was trying to earnestly comply with the request. The Magistrate Judge did not say here that the Plaintiff did not respond to the request, he said that the

Plaintiff did not " ...respond properly... " to the defendants request. He then goes on to describe the Plaintiff's efforts (paragraph 13, page 7) as " contumacious, dilatory, and in direct contravention of the Order of the Court." The Magistrate Judge is wrong in his assessment of this event. I tried my hardest to comply and I am not guilty of any " contumacious conduct, bad faith, dilatory actions, willful abuse of the process, egregious conduct, nor motivated by a desire to delay discovery."

40.) The discussion of Plaintiff's work product argument (paragraph 13, page 7) is admittedly unsettled in the Courts as to a Pro Se Plaintiff. However, if it is decided that a Pro Se Plaintiff does not have the same protections for the planning of his litigation as a lawyer enjoys, then the Pro Se is once again placed at a lower level of justice and process, and at a distinct disadvantage.

41.) The Rule 16 Statement and Order gave the Defendant's the names, addresses, and telephone numbers and the expected testimony of every witness the Plaintiff intends to call at trial. The discovery requests of the Defendants then ask what does all of this mean and what does it prove and about what and how do you plan to use it to substantiate your claims? That is asking for my mental images, legal theories, mental impressions, planning, conclusions, thought processes, and opinions, associated with my preparation for this litigation and that is work product and is immune from discovery.

42.) The Rule 16 Statement and Order and my answers to interrogatories sent by the Defendants, gave an identification to each audio and video tape that had been given to the defendants in response to a production of documents request by the Defendants for Production of Documents. What they ask now is what does all of that mean and what does it prove and about what and how do you plan to use it to substantiate your claims? That is asking for my mental images, legal theories, mental impressions, planning, conclusions, thought processes, and opinions, associated with my preparation for this litigation and that is work product and is immune from discovery.

43.) The Rule 16 Statement and Order and my answers to the Defendants' interrogatories and requests for the Production of Documents gave a description of every document that I intend to use at trial either as direct evidence or as impeachment material. What they ask now is what does all of this mean and what does it prove and about what and how do you plan to use it to substantiate your claims? That is asking for my mental images, legal theories, mental impressions, planning, conclusions, thought processes, and opinions, associated with my preparation for this litigation and that is work product and is immune from discovery.

44.) I do not object to giving the Defendants all of the documents and other tangible materials they request, and I have done that as best I can. What I do object to is the Defendants thinking that they have the right to discover my innermost thoughts and the Court backing them up in that thinking by ignoring my objections because I am a Pro Se and could therefore not know what I am talking about, and granting their blanket requests for just that kind of work product information. Magistrate Judge said that my exhibits were not indexed or catalogued. My exhibits were marked for identification and the contents of each was described. Anything further than that involves my strategy and that is information immune from discovery. It is up to the Defendants to decide what those exhibits mean to them, and I will not be asking them what they mean to them because that would be privileged information.

45.) The Plaintiffs theory of this case is that the defendants, one and all, each in his own turn, willfully, knowingly, purposefully, intentionally, and maliciously did perform acts in the furtherance of the goal of an ongoing, single-purpose conspiracy, against the Plaintiff, said conspiracy designed to deprive him of his rights and to harm and damage him. The Plaintiff considers that it does not matter which defendant, did which act. What matters is that the defendants worked as a team to achieve their goal and that the acts, when performed, were performed by a member of that conspiratorial team. The Plaintiff may, or may not, know who held the nail and who held the hammer at any given moment. He does know that a defendant did hold the nail and that another defendant did hold the hammer and the nail was maliciously driven through the Plaintiff's rights. What the discovery request asked of the Plaintiff was work product pure and simple. The documents and tapes and claims are all in the possession of the defense counsel. How I planned to use this material to prove my charges is work product. What the documents and tapes say is evident, as they are all in English and require no translation from me. It is not up to me to prepare the case for the defense, and that is what most of the interrogatories sent to me ask me to do.

46.) When I was finally taken to see the stored records of the county, after it was too late to get materials for the evidentiary hearing, I was led to a room with no lights. The room was full of discarded office furniture, lighting fixtures, assorted trash, dust, dirt and approximately fifty (50) boxes of undifferentiated, unlabeled, and uncatalogued papers on hundreds of subjects collected by the county over the preceding ten years. Defense counsel, John Lee Williams, told the Plaintiff to help himself. John Lee Williams told the Plaintiff that it was not the job of the defense to do any more than show him the darkened room and let him pick and choose. It would have taken the Plaintiff months to go through that garbage. The Court knows the Rules of Discovery better than I do, and this is not what the Rules say. Yet, after the Plaintiff spends approximately one hundred and sixty (160) hard hours assembling, duplicating, labeling, and shipping the materials requested, the Magistrate Judge says the Plaintiff's material was not produced in any format responsive to the requests. All the request said was: " All " material, and all that I had I gave. In point of fact, I gave more than was required, since most of the informational material was to be used only for purposes of impeachment.

47.) It is not fair to demand that I explain to English speaking counsel what I think each of those documents and tapes mean or prove: that is work product. The Plaintiff expected to discover through examination of witnesses, on the stand, under oath, at trial, just who held the hammer and who held the nail. The majority of the documents, and video and audiotapes were intended to be used only for the purposes of impeachment. To do what the Magistrate Judge says that I should have done would effectively defeat sequestration of the witnesses, who are not defendants, at trial. And, the Plaintiff had given thought to the idea of dropping most of the present Defendants so that they could be sequestered during the trial. Is that work product? If my innermost thoughts were revealed to them now, they could simply band together and organize and rehearse their stories and tales to coincide with each other. I would rather hear the truth. I made my charges. It is none of the defense counsel's business how I plan to use the informational materials that I sent them to prove my charges. How I plan to do that, and what I think, is " work product, " and defense counsel have no right to piggyback on my ideas. The Rule 16 Statement and order clarified my charges as to each Defendant and I stand by those charges. It is up to the defense counsel to decide what that material means to them in relation to the charges I have made. I do not want to try the factual issues of trial by interrogatory. I should not be required to lead the defense counsel around by the hand and prepare their defense for them just because they are too uninterested to put forth the effort necessary to think for themselves. They all read English. The Rules do not give them the right to pick my mind. As to information that they are entitled to, information as to my finances, medical expenses, education and experience, that I have already given them. Notarized forms necessary for them to gain access to my records, on these subjects, from doctors and tax accountants and schools and former employers, I have already given to them.

48.) The various witness and what I expect each to testify to, the various documents and what I think they prove, the various audio and video tapes and what I think they prove is " all " contained in the Rule 16 statement that I submitted to the Court. There is no more, that is my case.

49.) As to my objection to the defendant's interrogatories, I submit the following: The only logical or legal defense available to the defendants in these various cases, as consolidated, comes in five parts, and disproving any one of the five parts could defeat the Plaintiff's claims as sure as breaking one link in a chain would render the chain ineffective. And, conversely, these same five parts are what the Plaintiff must prove. To defeat the Plaintiff's claims and proofs, the Defendants must show one or more of the following: (1.) Show that the Plaintiff did not have the rights that he claims were violated by the defendants; (2.) Show that the defendants did not commit the acts claimed by the Plaintiff; (3.) Show that even if the Defendants did commit the acts claimed, they were not committed as part of a conspiracy; (4.) Show that even if the Plaintiff did have the claimed rights and even if the acts complained of were committed by the defendants, and even if the acts were committed as part of a conspiracy, they did not constitute a violation of the Plaintiff's rights; And, (5.) Even if the Plaintiff did have the claimed rights, and even if the defendants did perform the acts complained of, and even if the acts were part of a conspiracy, and even if the acts did constitute a violation of the Plaintiff's rights, the Plaintiff was not harmed or damaged by the acts.

50.) No matter what the answer to Interrogatories such as asking the Plaintiff to list the N numbers of every airplane he has ever flown in his lifetime, it would not break one of the five links of this chain. The answer, or anything the answer might lead to, would not confirm or deny that the plaintiff had the rights he claims, or that the defendants did or did not perform the acts complained of, or that the performance of those acts did or did not constitute a conspiracy or violate the Plaintiff's right, or that if they did he was not damaged by those acts. Answers to questions such as these would have nothing to do with the issues of these cases. The questions are not relevant to the issues of the cases and were only propounded to perplex, unnecessarily burden, and harass the Plaintiff. And, the Plaintiff truly believes that if he were represented by an attorney, he would not even have been asked those kinds of questions. If the Plaintiff had been represented by an attorney, the Defendants would have exercised more care in the formulation of their questions, and it is further believed, by the Plaintiff, that if he had been represented by an attorney, the Court might not have so nonchalantly dismissed the Plaintiff's objections to those interrogatories, since they were so blatantly irrelevant to the issues presented by these cases as consolidated. Because the Plaintiff is a Pro Se, the defense counsel and the Court have assumed that it is not necessary to give the Plaintiff's filings any serious consideration because he does not know what he is doing, does not know what he is saying, and does not understand "lawyer talk." The Plaintiff has been told on several occasions that he does not know what he is doing. The Plaintiff may not know exactly what he is doing, but he does know what the defense counsel is doing. The Plaintiff believes that this is another aspect of a Pro Se being relegated to a lower level of justice and consideration. The defense counsel is guilty of a serious and deliberate abuse of the discovery process and the Court has supported that abuse throughout this litigation.

51.) The interrogatory mentioned in the preceding paragraph (50), is only one example of the many irrelevant questions asked in the defendant's discovery requests, and in reality amount to abuse of the discovery process by the defense counsel. Defense counsel are not even using the discovery process as a fishing expedition; it is worse than that. The defendants are attempting to drain the lake and pick the fish out of the mud, and any fish caught in that way, with these questions would be inedible. They are using it merely to burden the Plaintiff with unnecessary research time and paperwork, to deprive him of the time needed to work on relevant aspects of his case. Further, the defense counsel has far exceeded the number of interrogatories allowed by the rules when sub-parts are counted. Also, interrogatories of the latest set are redundant and have already been answered. The medical cost questions; names of doctors; forms to be signed and notarized, giving permission to get privileged information from doctors and tax accountants; this has already been done and now they ask for it again. This is unfair and the Court backs the defense counsel in their unreasonable demands. There must be a reason. The Plaintiff admits that he does not know what the reason is, unless it is simply the following, with an added emphasis, of the directions of the Court of Appeals to view Pro Se litigants with suspicion, and avoid them like the plague.

52.) The Rules of Procedure concerning interrogatories is not an open license for any question, there are limits. The defense counsel has far exceeded these limits and still, except for the set served on the Plaintiff on May 2, 1998, and labeled as concerning case 3-97-0896, and notwithstanding what the Magistrate Judge has said, the Plaintiff has responded to each and every one of them. The set of interrogatories served on the Plaintiff on May 2, 1998, and labeled as concerning case number 3-97-0896, where case number 3-97-0896 has been consolidated, opens a box of horrors for the Plaintiff. The deadline, for interrogatories had passed before the Plaintiff received those interrogatories. So, in view of the laxity of defense counsel to serve the interrogatories on time, the Court sets a new deadline as open-ended for the defendants. So much for fair and impartial. The defendants had months to submit those interrogatories and they waited until the last day, April 30, 1998, to file them and then mail them so the Plaintiff would not receive them until May 2, 1998, giving the defendants time to file a Motion to Modify the scheduling Order as to the Defendant's only and thereby correct their laxity. The scheduling Order said written discovery would be completed by April 30, 1998. How can the Plaintiff complete his written answers by April 30, 1998, when he does not even receive them until May 2, 1998.

53.) There are thirteen defendants in six different cases consolidated for hearing. Six times 13 equals 78. That means that under the concept that each defendant in each of the consolidated cases can send the Plaintiff a set of twenty-five irrelevant interrogatories, the Plaintiff could be forced to answer one thousand nine hundred and fifty (1,950) irrelevant questions. The Plaintiff has been made the Defendant. The vast majority of the interrogatories sent by the Defendants are not gauged to obtain material and information for their defense, they are gauged to harass and burden the Plaintiff, to delay the process, and to attack the Plaintiff's character and integrity. The Plaintiff's civil rights do not hinge on his character and integrity.

54.) It is my understanding that the Rules say that when a party objects to an interrogatory, the objection must be specific as to which question the objection is made and the reasons for the objection to that particular question. This has not been done by the Defendants. They merely filed a blanket motion to compel the answers to a set of interrogatories on October 8, 1997, and on October 10, 1998 as docket # 96 and # 99, respectively, and the Court approves the Motion in an Order entered on February 4, 1998 as Docket # 139 saying: " ... there have not been any responses to the request nor any valid objection nor any other reason why the discovery responses have not been provided." Yet, those interrogatories were answered by the Plaintiff on October 14, 1997, more than three months before an Order saying that there had not been any response at all to the discovery request. Did the defendants not receive the Answers served on them on October 14, 1997, six days after they filed their Motion to Compel and more than three months before the Motion was granted? Was the defendants' Motion to Compel, granted on February 4, 1998, a Motion to Compel a response or a Motion to Compel more complete answers. If the latter is true, then how did the Magistrate Judge know, on February 4, 1998, that the Answers were not complete when that information did not enter the record as docket # 150 until March 17, 1998, five weeks later. If the former is true then why didn't the defense counsel inform the Court that they had received a response, but that they were not satisfied with the Answers. If the defense counsel did so inform the Court, and it appears that they did, it was done exparte. The question raised in the Plaintiff's mind is how the Magistrate Judge knew, on February 4, 1998, that the interrogatories were not answered " fully " when he wrote his Order.(docket # 139) The response to the interrogatories served on the defendants, by the Plaintiff, on October 14, 1997, is nowhere included in the record filed in the clerks office until March 17, 1998 as docket # 150. And yet, the Magistrate Judge orders not simply that the set of interrogatories be answered, but that they be answered fully. The Plaintiff believes that the only way the Magistrate Judge could have had sufficient information on February 4, 1998, to Order the interrogatories answered fully, or to believe that the interrogatories had not been answered, or answered fully, was for him to have seen the Plaintiff's answers served on the Defendants on October 14, 1997. How and where did he see them?

55.) The Magistrate said in his Report and Recommendation that no proper response to his Order (docket # 139) had been made by the Plaintiff. The Plaintiff had responded to those interrogatories on October 14, 1997. If the Magistrate Judge knew, at that time, that the Plaintiff's response was not proper, where did he get that information? This Plaintiff does not understand much about exparte communications between lawyers and a judge except that it is not supposed to be going on. The Plaintiff attempted at the beginning of these cases to talk to Magistrate Judge Haynes about a procedural matter and he was told that the Judge was not allowed to talk to just one of the parties, on any subject, without the presence and knowledge of the other party(ies). I was told that any exparte communication with the Magistrate Judge was improper and was not allowed. So, since there is nothing in the record reflecting the fact of, or the quality of, my October 14, 1997 response to the Defendant's interrogatories, I ask again: how did the Magistrate Judge know, at that time, February 4, 1997, that I had not served a proper response? I suppose this is another instance where a lawyer has an advantage over a Pro Se; a lawyer can have exparte communications with a judge, but a Pro Se cannot.

56.) The Plaintiff believes the Discovery Process to be important, but in this case it is not being adjudged and applied in the same manner for both the Plaintiff and the Defendants. That does not constitute a fair and impartial hearing of the Plaintiffs claims. The Plaintiff has been given little consideration or input into the formulation of scheduling orders. The Plaintiff had to file a Motion to effect a change in the scheduling order, which Judge Campbell approved.

However, since that time, the Magistrate Judge has changed the scheduling order several times with no input from the Plaintiff. The Plaintiff does not even know of the changes made until he receives a copy of the changes in the mail.

57.) The Plaintiff has a copy of a letter (attached hereto) dated February 6, 1998; a letter sent to Magistrate Judge Haynes by defense counsel, Joseph Wheeler. The letter said that: " as instructed by Magistrate Judge Haynes " the scheduling order has been modified. Am I to understand that a judge can have ex-parte communications with one party, but the opposing party cannot have ex-parte communications with the Judge? How were the instructions of Magistrate Judge Haynes delivered. Was it by written communication, telephone, face to face? Who first instituted the communication? How much of this is going on behind the Plaintiff's back? Is this fair and impartial? Why did the Plaintiff learn of this backroom communication ex post facto. There has not been a status conference since October, 1997, almost nine months ago. The Plaintiff is accused of tactical delay. The Plaintiff filed a certificate of readiness for trial and asked that a date be set. The Defendants all objected. They have done nothing to move this process along for nine months and yet they object. Their objections are based on their dissatisfaction with my answers to their interrogatories, and yet their dissatisfaction is in no way delineated in their filings with the Court, even to this day; just blanket objections. The Magistrate has, in effect, ruled on Motions not before him, and has used information to formulate those Rulings not available to him in the record that he said he reviewed before making the ruling. Then the Magistrate Judge says that the Plaintiff's claims should all be dismissed, and that they should be dismissed without a hearing.

OBJECTION TO THIRD INSTANCE CHARGED

58.) The third instance of the Plaintiff's alleged violation of an Order of this Court concerned the Sign and Date Order and related filings. (docket numbers 21, 22, 26, and 39) On March 3, 1997, the defendants filed a Motion to Require the Plaintiff to sign and date all servings on the defendants. The Motion had no exhibits or attachments. The Motion made no mention of what serving was not signed or dated. The Motion merely said that the Plaintiff " persistently " (emphasis mine) failed to sign and date his servings on the defendants. In his Report and Recommendation, Magistrate Judge Haynes (paragraph 14, page 7) said: " As a result of Plaintiff's failure to sign and date the certificate of service attached to defendants' copy of plaintiff's motion for default judgment against defendants McCoy and Rawlings in their individual capacities (Docket Entry No. 20), defendants were " forced " (emphasis mine) to file a motion to require dated and executed certificates of service (Docket Entry No. 21)."

59.) How were the defendants' " forced " (emphasis mine) to file the Motion? That statement by the Magistrate was prejudicially motivated. The Defendants did not contact the Plaintiff and tell him that he failed to sign and date the certificate of service, or call his attention to it in any other way. If they had and Plaintiff had refused thereafter to sign and date service, then they would have been " forced " to file such a Motion. (emphasis mine) And, how, with nothing in the record, except a signed and dated original of Docket # 20, did Magistrate Judge Haynes know that the serving claimed to have not been signed and dated was Docket Entry No. 20? The Plaintiff did not know that until he received a copy of the Report and Recommendation on July 1, 1998. Where, between the time of the filing of the defendants' Motion for an Order to sign and date, and the time of writing the Report and Recommendation, did Magistrate Judge Haynes learn that the service, that allegedly had not been signed and dated, was docket # 20. That information is not a part of the record that he reviewed to make his ruling. Is this not evidence of more exparte communication between Magistrate Judge Haynes and defense counsel?

60.) When the Defendants filed their Motion for the sign and date order, they included no exhibit with the Motion; just a bare assertion. After this Motion was filed, the Plaintiff filed a Motion asking the

Defendants be required to sign and date their services on the Plaintiff. The Plaintiff attached three exhibits as examples of servings on him by the Defendants that had not been signed and dated. The Magistrate Judge denied the Plaintiff's Motion. He noted that it was in light of the attached exhibits. When the Plaintiff raised this subject at the status conference, The Magistrate Judge said basically that the lawyers were honorable men and could be trusted because they were officers of the Court and had taken an oath. These words were delivered from the bench. The implication is obvious, and the Plaintiff views it as being in line with the directions of the Court of Appeals mentioned earlier. Is the Plaintiff to conclude that this is not biased and prejudicial? Magistrate Judge Haynes, at that same status conference, severely chastised the Plaintiff for filing his Motion to Order the Defendants to sign and date. He said the Plaintiff should have shown the common courtesy to call the defense counsel and work things out before filing the motion. He also chastised the Plaintiff for using the word " persistently " in his Motion. This should be contrasted with the fact that the defense counsel did not give the Plaintiff the " common courtesy " of a phone call before they filed the same Motion which Magistrate Judge Haynes granted with a warning to the Plaintiff of possible dismissal. Magistrate Judge Haynes also seemed to find no objection to the defense counsel's use of the word " persistently " first, in their Motion granted by him.

61.) Those same lawyers, who are so honorable and trustworthy, on December 30, 1997, filed an Objection (docket # 133) to the Plaintiff's Certificate of Readiness for Trial (docket # 131). This Objection, unlike any other paper filed in these actions by the Humphreys County Defendants, was signed only by Thomas I. Carlton, Jr. and Joseph R. Wheeler. The Objection was not signed by John Lee Williams who is also an attorney for the Humphreys County Defendants but located in a different office in a different city. The Objection complains of a failure of service saying: " Plaintiff's failure to serve the undersigned counsel...." meaning that since John Lee Williams, located in a different city, and not being one of the undersigned, did receive a copy of the

Certificate. This leaves only the one office that claims that it did not receive a copy. The Plaintiff did mail that office a copy at the same time that he sent a copy to every one else listed on the certificate of service. The Plaintiff does not know why that one office did not receive its copy

62.) The only times that the Plaintiff has not mailed a copy of the papers filed in these actions, to all counsel, was between September 11, 1997 and October 6, 1997. Copies of those filings (Docket #'s 84, 85, 87, 89, 90, 91, and 92) were not served on the office of Cornelius & Collins (Thomas I. Carlton, Jr. & Joseph R. Wheeler) was because, at the September 11, 1997, status conference, the Magistrate Judge told the Plaintiff that it was necessary to serve only " one common counsel " for each of the Defendants. Thereafter, until the next status conference on October 6, 1997, the Plaintiff served John Lee Williams as the one common counsel for the Humphreys County Defendants. Now, even though it was the Magistrate Judge that so directed the Plaintiff that it was not necessary to serve

Thomas I. Carlton, Jr. and Joseph R. Wheeler, the Magistrate Judge now uses that failure to serve as a charge against the Plaintiff. The Plaintiff has never failed to mail copies to everyone on the certificate of service attached to the filing.

63.) On page 7, paragraph 15, of his Report and Recommendation, Magistrate Judge Haynes openly displays his prejudice of this Pro Se Plaintiff. He does this through a careful choice of some words and a careful omission of other words, and he did this in a single sentence: " Despite this admonition, however, plaintiff failed to serve a copy of his Rule 16 Statement and Order upon counsel for the Humphreys County defendants." (Emphasis mine.) He was referring here to the warning he had included in his Order to date and sign. (Docket # 22, Entry Date: March 5, 1997) The Rule 16 Statement and Order he referred to was served on October 2, 1997 as docket # 87. The Magistrate Judge had told the Plaintiff, from the bench, at a status conference on September 11, 1997, that it was necessary to serve only one common counsel for each Defendant, and there had been no different instructions from the Magistrate Judge between September 11, 1997 and the date of the filing and service of the Rule 16 Statement and Order and a copy of that filing was mailed to John Lee Williams who was counsel for the Humphreys County Defendants. The sentence, however, makes it appear that no service was made on the Humphreys County Defendants at all and that is not true. The fact that John Lee Williams was served and did receive a copy of the Rule 16 Statement and Order was most conveniently omitted by the Magistrate Judge to make his argument unjustly more convincing. There is nothing fair and impartial about that. He does the same thing in the next sentence. John Lee Williams was served and did receive a copy of that filing, too. Carlton and Wheeler were both mailed a copy of that filing and said that they did not receive it. It may be true that they did not receive a copy of the Certificate of Readiness, but the Plaintiff did mail it to them. So, out of all of the third violation charged by the Magistrate Judge, we have a single serving that was possibly lost in the mail; a Magistrate Judge citing alleged facts that could not have been learned from the record; and, a Magistrate Judge citing as fact, as if of his own personal knowledge, a statement made in a filing by the defendants. He does not say that the defendants say that " no such Motion or pleading was ever received by the Humphreys County defendants," because the Humphreys County Defendants could not truthful say that because John Lee Williams did receive a copy and he is counsel for the Humphreys County defendants also. The Magistrate Judge here twice made a deliberately misleading statement to harm the Plaintiff and help bolster his recommendation for the dismissal of all of the Plaintiff's claims.

OBJECTION TO FOURTH INSTANCE CHARGED

64.) On September 11, 1997, the first status conference was held by Magistrate Judge Haynes. In this conference, the Magistrate Judge Ordered the Plaintiff to file the Rule 16 Statement and Order. The Magistrate Judge asked the Plaintiff how much time he would need. The Plaintiff, knowing that the statement would involve countless hours of clerical time to collate, label, number, explain, and list more than two hundred (200) documents, 60 audio and video tapes, and several dozen witnesses, asked for sixty days. The Magistrate Judge at first said: " No, sixty days is too long. I might give you sixty days on 3:97-0450 and 3:97-0896, but on 3:96-1131, I could give you only twenty days." Then the Magistrate Judge said: " No, I am reluctant to modify Judge Campbell's scheduling Order and I can only give you two weeks." Then he said: " Today is the eleventh; you have until September 25, 1997 to complete your Statement and Order on all three cases." He was reluctant to change Judge Campbell's scheduling Order to give the Plaintiff sufficient time to complete his Rule 16 Statement and Order. But, the Magistrate Judge has himself, on several occasions since, modified the scheduling Order for the benefit, and at the request, of the Defendants. Fair and impartial?

65.) Thereafter, the Plaintiff began to organize and prepare his Rule 16 Statement and Order. The Plaintiff knew that it was physically impossible for him to comply with the Magistrate Judge's Order in that time frame. The Plaintiff filed an Objection to Judge Campbell, which was denied. The Magistrate Judge, in his Report and Recommendation, shuffs off the Plaintiff's assertion that he had familial obligations. That was a genuine assertion. The Plaintiff has a wife and five children that he must support. It is not a matter to be shuffed off. The Plaintiff had to support his family, he could not just take off from work for two weeks. In spite of all of this, working at night, the Plaintiff did finish part one (1) of the Statement and Order to the best of his ability and did file it on September 25, 1997 (docket No. 84). The Plaintiff said , at that time, that he was filing his partial Statement, on September 25, 1997, in a showing of good faith, and that he was doing the best that he could possibly do. He also said that he would file the remainder as soon as humanly possible.

66.) The Plaintiff continued to work long into the nights to complete his Rule 16 Statement and Order. On October 6, 1997, the Plaintiff filed part two of his

Rule 16 Statement and Order.(docket # 90) and, on October 8, 1997, just two days later, the Plaintiff filed the remainder, part three, of his Rule 16 Statement and Order. Part one was filed on time. Part two was filed eleven days later, and the final part two days after that, less than two weeks late. The Plaintiff had done the best that he could possibly do and the Magistrate Judge concludes that the Plaintiff's being less than two weeks late constituted a willful desire to delay discovery.

67.) On September 11, 1997, the Magistrate Judge gave the Defendants thirty (30) days to answer interrogatories sent to Defendant, Travis Jenkins, on July 19, 1997. and he did that at the same status conference that he gave the Plaintiff fourteen days, less than half that time to prepare a complete Rule 16 Statement and Order. The Defendant, Travis Jenkins, had already had 60 days to serve his Answers to interrogatories and he had not done that. The Magistrate Judge then gave him an additional 30 days to respond. He allowed the Defendant a total of ninety days to answer one set of interrogatories, the answers to which were necessary to fully set out the Plaintiff's Rule 16 Statement and Order. There is most usually two sides to every story. The Plaintiff is simply not guilty of any willful attempt at delay in the discovery process.

68.) On page 8, paragraph 16, the Magistrate Judge states: " Thus, it appears that plaintiff had seven and one half months in which to discover and communicate the information necessary to respond to defendants' discovery requests and comply with Pretrial Order No. 1. " This statement assumes that the Plaintiff had not responded to the Defendant's discovery requests. The Plaintiff had responded to the Defendants' discovery requests, all of them, on October 14, 1997. It is true that the Plaintiff learned later that the Defendants did not consider those responses proper. But, it is also true that the Motions To Compel, and the Motions To Dismiss filed by the Defendants shortly after the status conferences failed to make clear, or even mention, that they were intended to compel the Plaintiff to give better answers, but stated only that they wanted the

Plaintiff to respond. In fact, all of those Motions, until the Defendants' Motion To Dismiss filed March 17, 1998, as docket # 150, failed to suggest that the response while made was inadequate, and there was nothing in the record to suggest that was what the problem was on February 5, 1998, when Magistrate Judge Haynes issued his Order. (docket # 139)

69.) On February 19, 1998, the Plaintiff called the office of Joseph R. Wheeler to ask if he had any intention of informing Magistrate Judge Haynes that a response had been received by him, Joseph R. Wheeler, on October 14, 1997. Attorney Wheeler explained that a response had been received but that it was inadequate. The Plaintiff then asked why the Motions had said that no response had been received when it had, but that it was considered inadequate. The Plaintiff told Attorney Wheeler that he thought the Court was under the impression that no response at all had been made; that none of the Motions had objected to the inadequacy of the responses, only that there had been no response. The Plaintiff pointed out that the Motions were misleading. Attorney Wheeler then said that he would send the Plaintiff a list of the inadequacies contained in the responses. The Plaintiff told attorney Wheeler that would not tell the Court that responses had been received, but were considered, by the Defendants, as inadequate. Attorney Wheeler's office did mail the Plaintiff a list of what they considered failings in the responses, but did not file a Motion to that effect, and did not inform the Court until March 17, 1998. (docket # 150.) This was done after the February 5, 1998 Order.

70.) The manual and clerical work alone in the processing of over two hundred paper documents, and an accompanying explanation of what the Plaintiff expected that they proved; the duplicating of four sets of almost 60 audio and video tapes, together with an accompanying explanation of what the Plaintiff expected that they proved; and, the compilation of a list, together with addresses and telephone numbers, of 39 witnesses, and an accompanying explanation of their expected testimony and what the Plaintiff believed that testimony would prove, would cause a law office with secretaries, legal interns, and attorneys to be hard pressed to complete in 14 days. Yet, the Plaintiff was amazed that he had managed to do it in the time that he did. The Plaintiff believes the Magistrate Judge's characterization of the Plaintiff as willfully delaying the discovery process to be unfairly stated.

OBJECTION TO MAGISTRATE JUDGE HAYNES ANALYSIS OF THE CASES AND CONCLUSIONS OF LAW

71.) On page 9, paragraph 18, Magistrate Judge Haynes characterizes the Plaintiff's behavior as intransigent and involving gamesmanship. He makes this statement based on the four instances cited in his Report and Recommendation. The Plaintiff has already addressed those four instances above and would add here only that the events were not as simplistic as made to appear in the Magistrate's one-sided relation of them.

72.) On page 10, paragraph 19, the Magistrate used once more an alleged failure to abide by Court Orders and thereby causing delay and frustration of the Defendants' preparation of their defense when he said: Plaintiff's failure to serve counsel for defendants with a copy of his Rule 16 Statement and Order resulted in defendants' not receiving a copy until they were able to obtain it from another source only three days prior to the deadline for filing of defendants' responsive Rule 16 Statement." It is nothing short of outrageous that a Magistrate Judge, who had told the Plaintiff at the September 11, 1997, status conference that it was necessary to serve only one common counsel for each defendant, would then use the allegation that the Plaintiff, when he had served attorney, John Lee Williams, one of the common counsel for the Humphreys County Defendants, with a copy of the Rule 16 Statement and Order, had failed to do what he was supposed to do and should be dismissed. (all emphasis mine)

73.) On Page 12, paragraph 26, of the Report and Recommendation, Magistrate Judge Haynes states: " As of the date of this report, defendants have received nothing from plaintiff in response to their discovery requests. This failure is in direct contravention of the

February 5, 1998, Order of this Court. (emphasis mine) The Plaintiff served the Defendants his response to " their discovery requests " on October 14, 1997, almost three months before the February 5, 1998, Order of this Court. How could that be construed as being in direct contravention of the Court's February 5, 1998 Order?

74.) On page 13, paragraph 30, of the Report and Recommendation, the Magistrate Judge, quoting the Plaintiff, states: " ...abuses alleged in defendants' motions are the result of contradictory orders of the Magistrate Judge, bad faith on the part of the defendants' counsel, plaintiff's own lack of experience in the prosecution of a federal case, and the holding of the plaintiff to a strict adherence to the Rules, and the relaxed holding of the Defendant's counsel to the same Rules. (emphasis mine.) The foregoing paragraphs of this Objection paper explains specifically what the Plaintiff meant by those words. And, the Plaintiff believes that is exactly why a hearing should be held. The Plaintiff claims that there has been serious wrong doing in this litigation. A hearing is needed to see if it was the Plaintiff who is guilty of wrong doing and he needs to be dismissed because of it, or if it is the Magistrate Judge and the Defense Counsel who are guilty of the wrong doing and they need to be sanctioned.

75.) The Plaintiff asks that this Court give his arguments the same reading and consideration that would be given to any paper submitted to the Court, and that the Plaintiff himself be given the same, and equal, consideration of anyone else appearing before this Court. The Plaintiff is convinced that he is not paranoid, but that he has indeed been shortchanged in his pursuit of the redress of his grievances.

76.) I, Rock Abou-Sakher, declare under penalty of perjury, pursuant to 28 U.S.C.A., Section 1746, that all of the foregoing is true and correct to the best of my knowledge and belief. I make this declaration on July 10, 1998.

Respectfully declared and submitted,

Rock Abou-Sakher, Pro Se
11493 Hurricane Creek Rd.
McEwen, Tennessee, 37101
(931) 582-3854

CERTIFICATE OF SERVICE

I do hereby certify that I have caused a true and exact copy of this Objection to the Report and Recommendation of Magistrate Judge William J. Haynes, Jr., to be sent by certified mail, return receipt requested, to: John Lee Williams, 102 South Court Square, Waverly, Tn. 37185; Charles N. Griffith, 415 West Main St., Waverly, Tn. 37185; R. Dale Bay, Sun Trust Center, 424 Church Street, Suite 900, Nashville, Tennessee 37219-8615; and, Joseph R. Wheeler, suite 2700, Nashville City Center, 511 Union Street, Nashville, Tennessee 37219-0695, on this the 10th day of July, 1998.

Rock Abou-Sakher

LAW OFFICES
CORNELIUS & COLLINS
SUITE 2700
NASHVILLE, CITY CENTER
511 UNION STREET
POST OFFICE BOS 190695
NASHVILLE, TENNESSEE 37219-0695
(615) 244-1440
FAX (615) 254-9477

February 6, 1998

Ms. Patsy Flowers
Office of Hon. William J. Hayner, Jr.
649 U.S. Courthouse
801 Broadway
Nashville, Tennessee 37203

Re: Rock Abou-Sakher v. Richard McCoy, et al.
No. 3:96-1311 consolidated with Case Nos. 3:97-9459, 3:97-0896 and 3:97-0771

Dear Patsy:

As Magistrate Haynes instructed, we have prepared a modified scheduling order clarifying the April 30, 1998 date, to specify that this applies to written discovery only. It is our understanding that the parties shall have until July 31, 1998 to conclude all other discovery, including deposition discovery. By copy of this letter we are so advising all other parties and providing them with a copy of the modified order, so there will be no misunderstanding about the discovery schedule in these cases.

We would appreciate your submitting this order to Magistrate Haynes for entry, and please let us know if anything is required of the parties with regard to these issues. Thank you very much for you cooperation.

Sincerely,

Joseph R. Wheeler

JRW:mh
Enclosure

cc w/ encl:	Rock Abou-Sakher
	R. Dale Bay, Esq.
	Peter Curry, Esq.
	Charles N. Griffith, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

ROCK ABOUT-SAKHER,)
)
PLAINTIFF,)
)
v.) NO. 3:96-1131
) CONSOLIDATED WITH
RICHARD McCOY,et al.) CASE NOS. 3:97-0450,3:97-0896
) and 3:97-0771
Defendants.) JUDGE CAMPBELL MAGISTRATE HAYNES

MODIFIED SCHEDULING ORDER

The Court finds that clarification of the discovery and motion schedule set forth at page 3 of Docket Entry 139 is in order. Accordingly, the schedule is modified and clarified as follows:

1. All written discovery shall be

completed by April 30, 1998;

2. Plaintiff shall designate any expert by May 31, 1998;
3. The defendants shall designate any expert by June 6, 1998;
4. The parties shall have until July 31, 1998 to conclude all discovery;
5. Dispositive motions shall be due by August 30, 1998; and
6. Responses to such motional shall be filed by September 30, 1998.

It is so ORDERED this ___ day of February, 1998.

____

WILLIAM J.HAYNES, JR

PREPARED FOR ENTRY AT THE
DIRECTION OF MAGISTRATE
HAYNES:

Thomas I Carlton, Jr. (2759)

Joseph R. Wheeler (12847)

CORNELIUS & COLLINS
Suite 2700, Nashville City Center
511 Union Street
P.O. Box 190695
Nashville, Tennessee 37219
(615) 244-1440

Attorneys for Defendants, Richard McCoy, As Chairman of the Humphreys County Airport Authority; Humphreys County Airport Authority; Humphreys County, Tennessee; and Jaycee Rawlings as County Executive and Chairman of the Humphreys County Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been sent by United States Mail, postage paid, to Rock Abou-Sakher, pro se plantiff, 11493 Hurricane Creek Road, McEwen, Tennessee 37101-9803; and R. Dale Bay, Esq., Lewis, King, Kreig, Waldrop & Catron, A.P.C., 9th Floor, 424 Church Street, Nashville, TN 37219, attorney for defendant, Kennedy Newspaper; Peter Curry, Tuke, Yopp & Sweeney, Suite 1100, 414 Union Street, Nashville, TN 37219; and Charles N. Griffith, 415 W. Main Street, P.O.Box 456, Waverly, TN 37185; on this 6 day of February, 1998

Joseph R. Wheeler

This document was entered on the docket
in compliance with Rule 58 and/or Rule
79(a), FRCP, on 8-7-98
By TLC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
TENNESSEE
NASHVILLE DIVISION

ROCK ABOU-SAKHER) NO. 3:96-1131,
) CONSOLIDATED
WITH NOS.
3:97-0450,
v.) 3:97-0896,
3:97-0771,
3:97-0772
and
) 3:97-0777
RICHARD McCOY, et al.) JUDGE
CAMPBELL

ORDER

Before the court are a Report and Recommendation of the Magistrate Judge dated June 26, 1998 (Docket No. 167), Plaintiff's Objections thereto (Docket No. 168), and Defendants' Responses to Plaintiff's Objections (Docket Nos. 169 and 172).

The Court has reviewed the Magistrate Judge's findings and conclusions, the Plaintiff's Objections, the Defendants' Responses, the underlying Motions to Dismiss and Plaintiff's Response thereto, and the record.

The Plaintiff's objections are OVERRULED, and Magistrate Judge's Report and Recommendation (Docket No. 167) is ADOPTED and APPROVED. Accordingly:

(1) The Humphreys County Defendant's Motion to Dismiss (Docket No. 88) is GRANTED, and all claims against the Humphreys County Defendants[1] and DISMISSED.

(2) The Motion to Dismiss of Defendants Richard McCoy (in his capacity

as Editor of the News-Democrate) and Kennedy Newspaper Co., Inc. (Docket No. 148) is GRANTED, and all claims against Richard McCoy (in his capacity as Editor of the News-Democrat) and Kennedy Newspaper Co., Inc. are DISMISSED.

(3) Plaintiff's second Request of Judge Campbell for a Hearing on the Defendants' Dispositive Motions (Docket No. 146) is DENIED.

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[1] The Humphreys County Defendants are identified by the Magistrate Judge as the Following: Richard McCoy (as Chairman of the Humphreys County Airport Authority); Humphreys County Airport Authority; Humphreys County, Tennessee'-Jaycee Rawlings; John Lee Williams; Billy Hugh Link; Travis Jenkins; James Whittenburg; J.V. Stribling; Billy Cobb; and James Barnes.

In addition, the Humphreys County Defendants, Defendant Richard McCoy (In his capacity as Editor of the News-Democrat) and Defendant Kennedy Newspaper Co., Inc. shall be awarded reasonable costs and attorney's fees, pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure for their costs directly related to the pending motions and the conduct of Plaintiff that gave rise to such motion.

The amounts of such reasonable costs and attorney's fees shall be determined by the Magistrate Judge, who shall instruct the parties as to the information he shall require to determine such amounts and the deadlines for such submissions.

Also pending before the Court are the following motions:

(1) Motion to Dismiss by Defendant Richard McCoy and Kennedy Newspaper Co., Inc. (Dock No.93);

(2) Motion to Modify Scheduling Order by Defendant Humphrey's County, Tennessee (docket No. 95);

(3) Motion to Compel Discovery to Defendants Humphreys-County Airport, Humphreys County, Tennessee, Jaycee Rawlings and Travis Jenkins (Docket No. 96);

(4) Motion to Compel Discovery by Defendants Richard McCoy and Kennedy Newspaper co., Inc. (Docket No. 99);

(5) Motion for Hearing on Defendants' Motions to Dismiss by Plaintiff (Docket No.134);

(6) Renewed Motion to Dismiss by Defendant Humphreys County, Tennessee (Docket No. 150); and

(7) Motion to Compel Discovery by Defendants Humphreys County Airport (Docket No. 166).

In light of the above rulings on Defendants' Motion to Dismiss, all of the above seven motions are DENIED as moot.

Having dismissed all claims against the Humphreys County Defendants, Defendant McCoy in his capacity as Editor, and Kennedy News paper Co., Inc., the remaining Defendants in this consolidated litigation are; Ira C. Mercer, Sr. in Case Nos. 3:96-1131 and 3:97-0450 and Rock Abou-Sakher in Case Nos. 3:97-0771, No. 3:97-0772 and No. 3:97-0777.

The remaining claims and parties in this case are REFERRED to the Magistrate Judge for continued case management.

IT IS SO ORDERED.

TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

FILED OCT 11, 2000
LEONARD GREEN, Clerk

No. 98-6704
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROCK ABOU-SAKHER,
Plaintiff-Appellant,

v.

On appeal from the
United States District
Court for the Middle
District of Tennessee

RICHARD McCOY, et al.,
Defendants-Appellees.

BEFORE: **NELSON** and **NORRIS**, Circuit Judges; and **MATIA***, Chief District Judge.

PER CURIAM. Rock Abou-Sakher, a Tennessee litigant proceeding pro se, appeals a district court judgment dismissing his claims brought under various federal statutes. Abou-Sakher argues that the district court erred in [1] applying too harsh a standard to a pro se litigant, and [2] dismissing the case where less severe sanctions would have been appropriate. For the following reasons, we **AFFIRM** the district court's dismissal of the case and the denial of plaintiff's motion for relief under Fed. R. Civ. P. 60(b).

Abou-Sakher's claims stem from the expiration of his lease at the Humphreys County Airport in Tennessee. In 1987, Abou-Sakher entered into an agreement with the airport to act as its fixed-base operator. Essentially, he performed ground and fuel services for the airport as well as provided hangar space for aircraft. As part of this agreement, Abou-Sakher held the title of airport manager, a part-time position. In 1994, the Humphreys County Airport Authority hired its full-time airport manager and ended its relationship with Abou-Sakher. This chain of events prompted him to sue in Tennessee state court. Despite an adverse

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* The Honorable Paul R. Matia, Chief United States District Judge for the Northern District of Ohio, sitting by designation.

state court ruling, Abou-Sakher filed several additional complaints in federal court throughout 1997.[1]

Seeking compensatory and punitive damages, Abou-Sakher sued Richard McCoy, individually and in his capacity as editor of *The News Democrate*; Kennedy News Paper Company, Inc.; and certain officials and employees of Humphreys County, Tennessee ("Humphreys County defendants"). At the core of Abou-Sakher's various complaints was the allegation that defendants conspired to violate his rights under 29 U.S.C. § 621 and 42 U.S.C. § 1981, 1983, 1984, 1985, 1986, and 200e by depriving him of property and employment interests arising from his lease with the airport. The district court consolidated all of Abou-Sakher's suits.

On October 3, 1997, the Humphreys County defendant filed a motion to dismiss Abou-Sakher's complaints because of his failure to comply with both the court's orders and defendants' discovery requests. Defendant McCoy, in his capacity as editor of *The News Democrat*, and Kennedy Newspaper Co., Inc., filed a second motion to dismiss, incorporating the facts and legal arguments made in the original motion to dismiss.

In the report and recommendation, the Magistrate Judge agreed with defendants

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[1] The state court concluded that the lease between Abou-Sakher and Humphreys County Airport expired in 1992. See Abou-Sakher v. Humphreys County, 955 S.W.2d 65 (Tenn. Ct. App. March 27, 1997).

and found that Abou-Sakher repeatedly disregarded the court's pretrial orders. Accordingly, the Magistrate Judge recommended that the district court grant defendants' motion to dismiss. The district court adopted the report and recommendation and dismissed the consolidated action, with prejudice, pursuant to Fed. R. Civ. P. 37(b)(2). The court also denied a motion for relief under Fed. R. Civ. P. 60(b). Abou-Sakher's appeal followed.

Upon review, we concluded that the district court did not abuse its discretion in dismissing Abou-Sakher's complaint with prejudice pursuant to Fed. R. Civ. P. 37(b)(2). *See Regional Refuse Sys., Inc. v. Inland Reclamation Co.*, 842 F.2d 150, 154 (6th Cir. 1988). Rule 37(b)(2) authorizes a district court to dismiss a case where the sanctioned party failed to obey an order to provide or permit discovery. The district court may dismiss the case under Rule 37 only in extreme situations showing a clear pattern of delay or contumacious conduct by the plaintiff. *See Carter v. City of Memphis, Tenn.*, 636F.2d 159, 161 (6th Cir. 1980) (per curiam).

When determining whether the district court abused its discretion by dismissing a case pursuant to Rule 37, the court should consider: "(1) whether the adversary was prejudiced by the dismissed party's failure to cooperate in discovery, (2) whether the dismissed party was warned that failure to cooperate could lead to dismissal, and (3) whether less drastic sanctions were imposed or considered before dismissal was ordered." *Bell v. Lakewood Eng'g and Mfg. Co.*, 15 F.3d 546, 552 (6th Cir. 1994) (quoting *Taylor v. Medtronics*, Inc., 861 F.2d 980, 986

(6th Cir. 1994) (*citing Regional Refuse Sys.*, Inc., 842 F.2d at 155)). Dismissal is the sanction of last resort and "it should be imposed only if the court concludes that the party's failure to cooperate in discovery was *willful*, *in bad faith*,

Nos. 98-6704

or due to its own fault." Beil, 15 F.3d at 552 (citing Taylor, 861 F.2d at 985)(emphasis added).

While the district court did not impose a lesser sanction on plaintiff, the record below indicates that Abou-Sakher acted contumaciously by consistently failing to comply with the court's orders and ignoring defendants' discovery requests. The district court clearly warned plaintiff on at least three occasions that his failure to comply with orders could result in the dismissal of his action.[2] (R.22 Order 3.5.97; R. 40 Order 5/12/97; R 139 Order 2/4/98.) A demonstrated failure to heed the court's warnings on several occasions including failing to appear for a deposition, failing to produce documents requested by opposing counsel and the court, failing to complete his Rule 16

Statement and Order, and failing to serve defendants with his filings.

Abou-Sakher argued his behavior was the result of defense counsel's bad faith, time and resource restraints, and a misunderstanding of the Federal Rules of Civil Procedure. While we recognize that pro se litigants are held to a less stringent standard than attorneys, Abou-Sakher's reasoning fails to justify his actions in this case. Cf. Harris v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 595, 30 L.Ed.2d562 (1971). His total disregard for both the district court's orders and defendants' legitimate discovery requests caused undue delay in this matter. Abou-Sakher's actions have been pending since 1997, and he has been given ample opportunity to comply with the court's orders. The preliminary

[2] The parties did not submit a Joint Appendix for this appeal, therefore, we must refer to the documents as they appear in the district court record.

information requested by defense counsel and the information required by the court's Rule 16 Statement and Order was nearly identical. Nevertheless, Abou-Sakher failed to produce this information—information necessary to proceed with this matter—on several occasions. Therefore, we have no trouble finding that the district court properly dismissed this action pursuant to Fed. R. Civ. P. 37(b)(2).

Although not specifically addressed in his briefs, Abou-Sakher also appeals the district court's denial of his Rule 60(b) motion for relief. "Federal Rule of Civil Procedure 60(b) allows a district court, upon a party's motion, to relieve that party from a final judgment upon a showing of '(1) mistake, inadvertence, surprise, or excusable neglect. . . or (6) any other reason justifying relief from the operation of the judgment."' Amemational Industries, Inc. v. Action-Tungsram, Inc., 925 F2d 970, 975 (6th Cir. 1992). A district court's decision to grant or deny the motion is reviewed only for abuse of discretion. Id. For his 60(b) motion, Abou-Sakher retained counsel in an attempt to secure "one more chance" to proceed with this action.

The memorandum in support of the motion, however, covered the same ground as his objections to the report and recommendation. Abou-Sakher's pattern of behavior in this action met the standard for willful misconduct and fails to fall into any of the Rule 60(b) categories for relief. With no further argument on appeal, we find that the trial court did not abuse its discretion in denying Abou-Sakher's Rule 60(b) motion.

Accordingly, the district court's judgment in favor of defendants is AFFIRMED.